

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 569

R. J. THOMAS, APPELLANT,

vs.

J. W. COLLINS, SHERIFF OF TRAVIS COUNTY,
TEXAS

OFFICE OF THE CLERK OF THE SUPREME COURT OF THE UNITED STATES

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APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS

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**IN THE DISTRICT COURT OF TRAVIS COUNTY,
TEXAS, 53RD JUDICIAL DISTRICT**

No. 69,164

STATE OF TEXAS

VS.

R. J. THOMAS

Statement of Facts—Filed in Supreme Court of Texas,
October 20, 1943

Before Hon. J. Harris Gardner, Judge Presiding

APPEARANCES:

Mr. Gerald C. Mann, Attorney General of Texas; Mr. Fagan Dickson, Mr. Jesse Owens, Assistant Attorneys General, Attorneys for Plaintiff, State of Texas.

Mr. Ernest Goodman, Mr. Herman Wright, Attorneys for Defendant.

Be It Remembered, that on the 25th day of September, A. D. 1943, came on to be heard the Hearing on Motion for Contempt in the above entitled and numbered cause, whereupon the following facts were admitted in evidence by the Court:

[fol. 7]

Plaintiff's Evidence

OFFERS IN EVIDENCE

Mr. Dickson: The plaintiff will offer the Plaintiff's Original Petition, and the Court's Fiat.

Mr. Wright: May it please Your Honor, the defendant objects to the introduction of both exhibits for the reasons recited in the motion to dismiss, in its motion to quash, and its motion to dissolve; without repeating those, we simply urge the same ones. There is no objection to doing it in that manner, is there?

Mr. Dickson: No, sir.

The Court: Those objections will be overruled.

Mr. Wright: Note our exception.

(Thereupon the Plaintiff's Original Petition and the Court's Fiat above referred to, identified as Plaintiff's Exhibits Nos. 1 and 2, respectively, were received in evidence, but same, being included in the Clerk's transcript, are not copied herein.)

Mr. Dickson: The plaintiff next offers in evidence the [fol. 8] Citation and Return on the Plaintiff's Original Petition, the Return being signed by Neal Polk, Sheriff of Harris County, showing service on September 23, 1943, on the defendant Thomas.

Mr. Wright: May it please the Court, the defendant urges the same objections to the introduction of this exhibit that are urged in its motion to dismiss, its motion to quash, and the motion to dissolve.

The Court: The motion will be overruled.

Mr. Wright: Note an exception.

(Thereupon the Citation and Return above referred to, identified as Plaintiff's Exhibit No. 3, was received in evidence, but same, being included in the Clerk's transcript, is not copied herein.)

Mr. Dickson: Next we offer the Notice on the Writ of Contempt or rather the Writ of Temporary Restraining Order and Notice together with the Sheriff's Return, showing service on R. J. Thomas on September 23, 1943, at 10:00 o'clock a. m. in the City of Houston, Texas.

Mr. Wright: May it please the Court, the defendant objects to the introduction of the exhibit for all the reasons [fol. 9] urged in his motion to dismiss, his motion to quash and his motion to dissolve.

The Court: The objections will be overruled.

Mr. Wright: Note an exception.

(Thereupon the Notice and Sheriff's Return above referred to, identified as Plaintiff's Exhibit No. 4, was received in evidence, but same, being included in the Clerk's transcript, is not copied herein.)

Mr. Dickson: The plaintiff next offers the Verified Motion for Contempt which was filed in this Court on September 24th.

Mr. Wright: May it please the Court, the defendant objects to the introduction of the exhibit for all the reasons urged in his motion to dismiss, his motion to quash and his motion to dissolve.

The Court: The objection will be overruled.

Mr. Wright: Note our exception.

(Thereupon the Verified Motion for Contempt above referred to, identified as Plaintiff's Exhibit No. 5, was received in evidence, but same, being included in the Clerk's transcript, is not copied herein.)

[fol. 10] Mr. Dickson: The plaintiff next offers Order of Attachment issued by this Court on September 24, 1943.

Mr. Wright: May it please the Court, the defendant objects to the introduction of the exhibit for all the reasons urged in his motion to dismiss, in his motion to quash, and in his motion to dissolve.

The Court: The objection will be overruled.

Mr. Wright: Note our exception.

(Thereupon the Order of Attachment above referred to, identified as Plaintiff's Exhibit No. 6, was received in evidence, but same, being included in the Clerk's transcript, is not copied herein.)

Mr. Dickson: And we next offer Mr. Thomas' statement in Court that he has submitted himself to the jurisdiction of the Court and is present and is here subject to the orders of the Court. That is correct, isn't it?

Mr. Wright: Yes, and in that connection, however, I think the record ought to show that as soon as Mr. Thomas [fol. 11] was advised of the issuance of the Writ of Attachment when he was in the City of Houston in attendance on a meeting there he readily submitted himself to the jurisdiction of the Court without the necessity of the issuance of service.

(Further discussion omitted.)

Mr. Wright: May it please the Court, I don't know whether my position is clear about this when I say that he submitted to the jurisdiction of the Court. I meant that Mr. Thomas is here ready to obey any lawful orders of the Court, subject to his claim of unconstitutionality, and that sort of thing. I mean that we are not admitting that we are properly in Court on constitutional grounds.

The Court: Yes, I understand your position. Did you say he is here exactly the same as if the Writ of Attachment had been served and he had been brought in here by the Sheriff?

Mr. Wright: Yes, sir, he is here in that capacity.

Mr. Dickson: We will ask Mr. Owens to take the stand.

[fol. 12] JESSE OWENS, a witness for the plaintiff, having been duly sworn, testified as follows:

-Direct examination.

Questions by Mr. Dickson:

Q. Your name is Jesse Owens?

A. Yes, sir.

Q. You are an Assistant Attorney General of the State of Texas?

A. Yes, sir.

Q. Serving under Attorney General Mann?

A. Yes, sir.

Q. Are you the person who signed and swore to this Motion for Contempt which has been introduced as Plaintiff's Exhibit No. 5 (counsel hands exhibit to witness)?

A. Yes, sir.

Q. Were you at the meeting at Pelly Thursday night, which you refer to in that affidavit, Mr. Owens?

A. I was.

Q. Did you personally see and hear Mr. Thomas at that place and time?

A. Yes, sir.

Q. Are the facts stated in your affidavit true and correct?
[fol. 13] A. Yes, sir.

Q. Did you see Mr. Thomas at the meeting solicit one Pat O'Sullivan, by name?

A. At the conclusion of the meeting he pointed out a gentleman that was seated on the front row of seats, and he had a bunch of literature or application blanks, I believe he said they were, in his hand, and he said, "Brother O'Sullivan, I urge you and solicit you to join the Union," and at that instance Mr. O'Sullivan came up and took one of the application blanks and went to a nearby table, and, of course, I didn't see what he did, but I presume he filled the application blank out.

Q. Mr. O'Sullivan said he was not a member of the Union?

A. That is right.

Q. Now, Mr. Owens, did Mr. Thomas do anything else with his application blanks?

A. Well, he kept waving them around and exhibiting them, and he said, I think, that—I know he said, “I earnestly urge and solicit all of you that are not members of your Local Union”—that is, the employees of the Humble Oil and Refining Company and the workers at this plant, it was—“to join your local Unions,” and he said, “I do [fol. 14] that in the capacity of Vice President of C. I. O.”

Q. Where was the plant that he was talking about in reference to his location?

A. I believe it is—I believe he said it was located at Baytown, or somewhere in that vicinity. I didn’t see the plant.

Q. How far is the place he was speaking at—Pelly—from the plant?

A. Well, I wouldn’t attempt to approximate the distance. It is a very few miles, though; it is in the vicinity of where the meeting was held.

Q. What size place is Pelly?

A. Well, I wouldn’t know how to estimate the population; it is a very small town; it seems to have just one street, that I recall; the City Hall is located on it; I suppose there is, oh, maybe fifteen hundred to two thousand people.

Q. Well, who lives there—what class of people live there?

A. I gathered from conversation with some of the individuals there prior to the meeting that practically everybody that lives there are workers of the gasoline plant or refinery there—the Humble Oil and Gas Company, I believe [fol. 15] it is.

Q. At where?

A. At Baytown.

Q. Did you talk with some people there who are workers?

A. Yes, I talked quit- a bit with them.

Q. And the people there who were not members of the C. I. O. Union?

A. I believe I talked to one man that told me he was a foreman of some branch of the labor down there that wasn’t a member, and that the purpose of the meeting was to get as many of the employees as they could to join the Union.

Q. Did you hear Mr. Thomas make this statement at that time: “I also read in the papers here a statement from

the Attorney General's Office that said if I just told you good people the reasons I thought you ought to join a Union that wouldn't necessarily be a violation of the law. I did not come here to break the law. I came here to make this speech, and to ask you to join the Union"—

A. Yes, sir, I—

Q. Just a minute: "But since the issue has arisen I don't want anybody to say that I am evading it—and I don't want anybody else involved to have an opening to get out [fol. 16] without making a test of this law." Did you hear him say that?

A. Yes, sir, I heard him make that statement.

Q. And after that he singled out this man, O'Sullivan, and asked him to join the Union?

A. Yes, sir, that is correct.

Mr. Dickson: I believe that is all. He is your witness.

Cross-examination.

Questions by Mr. Wright:

Q. Mr. Owens, I believe that you were present with Mr. Fagan Dickson there at the meeting, were you not?

A. Well, I was present with him part of the time, but I would say approximately an hour I wasn't with Mr. Dickson.

Q. All right. Now, you were with Mr. Dickson, I believe, when I gave him copies of Mr. Thomas' speech that he delivered there, were you not?

A. Well, I wasn't right present, but then I saw the copy you gave him.

Q. Yes, sir. Mr. Owens, did you also see copies of the program that was distributed there at the meeting, a [fol. 17] mimeographed paper?

A. Well, I made some notes on the back of one of them, but I didn't read the program. I picked one up and used it to make some notes on.

Q. Can you tell whether or not that is one of those you saw there and wrote on the back of (counsel hands paper to witness)?

A. All I can say is it is the same size and color; I didn't even read it—I picked the paper up and made some notes on the back, but didn't read it.

Mr. Dickson: Let me see that. I might not have any objection. (Paper is passed to Mr. Dickson). No objection to it, if you say that is the program that was handed out at the time.

Q. You don't have any serious doubt about this being the program, do you, Mr. Owens?

A. Well, I just don't know. I asked a fellow—I said a while ago that I picked that up; I was mistaken. One of the people present, I asked him for a piece of paper and he handed it to me, since I have thought about it, I remember I didn't pick it up off the ground. I presume that is the same kind.

Q. Mr. Owens, don't you know, as a matter of fact, that [fol. 18] these were given out at the meeting, and everybody had one?

A. I don't know that it was, but I suppose 't is.

Q. Mr. Owens, we don't know—

A. A fox hunter gave me one.

Mr. Wright: That is all.

Redirect examination.

Questions by Mr. Dickson

Q. Mr. Owens, was any one arrested at that meeting, as far as you know?

A. Well, I heard a commotion and I saw a Deputy Sheriff talking to some fellow, and heard a good many of them say "Goodby" up there, or something like that, and I presume it was an arrest; anyway, they went up the street toward the Hall.

Mr. Wright: Just a second. Your Honor, I am willing to allow some latitude here to help the Attorney General get the matter into evidence, but I don't think the witness ought to presume that somebody was arrested, unless he knows.

The Court: That is right.

Mr. Wright: And I object to it and ask that it be stricken from the record.

[fol. 19] A. Well, he was arrested all right, because the Deputy Sheriff took him in custody and left the premises with him.

Q. Was that before, during, or after Mr. Thomas had made his speech, and solicited these people?

A. It was some twenty-five—twenty or twenty-five minutes after he had solicited Mr. O'Sullivan.

Q. Was the meeting going on then, or had it disbanded?

A. It had disbanded.

Q. Was any attempt made to interfere with Mr. Thomas or any of those other speakers on that program while the meeting was going on?

A. No, sir, none whatever—

Q. You heard all the speakers?

A. —there was no disturbance whatever.

Q. You were with me at the time, is that correct?

A. Well, yes, sir, except you were in a car, and I was across the street.

Q. Well, we were the only ones there from the Attorney General's Office?

A. That is right, yes, sir.

Q. And did the Attorney General's Office make any effort to break up the meeting or to disturb Mr. Thomas' speech? [fol. 20] A. None whatever.

Q. I see.

A. I might add that I voluntarily went up there; I was not sent there, I was—I just went there.

Mr. Dickson: I believe that is all.

Recross-examination.

Questions by Mr. Wright:

Q. Mr. Owens, this meeting was quite a peaceful affair, wasn't it—there was no disturbance of any kind out there, was there?

A. Well, no disturbance in the crowd; I recall that there was a car or two that drove down the street that might have created a little disturbance.

Q. Well, now, Mr. Owens, did anybody at the meeting—did you see any fist fights there or any wrestling or any unusual breaches of the peace, around there?

A. Oh, no, it wasn't a sports rally, or anything like that going on.

Q. That is right. That was a very peaceful orderly gathering, where people came to listen to somebody make a

speech, isn't that true,—just like a political rally, practically?

[fol. 21] A. Well, I got the impression that it was a political rally, to tell you the truth.

Q. I didn't ask you that. Just answer the question, just answer whether or not it was the same character of meeting you see in a town of that size during a political campaign, when a candidate comes in and makes a speech? Isn't that generally what you saw?

A. Well, I don't know; I haven't attended very many of these meetings in this section of the state, I think they might be different from where I live.

Q. Have you ever attended any political rallies in your life?

A. Yes, sir, quite a few.

Q. Now, wasn't that meeting just like the usual political rallies?

A. No, sir, usually political rallies I attended, they sold pies and ice cream.

Q. Well, let's leave out the pies and ice cream. Outside of the pies and ice cream, wasn't it practically the same sort of political rally in a community of that size?

A. No, I wouldn't say that.

Q. What would you say?

A. It was more of a comedian show to me than anything else.

[fol. 22] Q. Well, maybe your sense of humor is different. I am talking about the crowd—I am talking about the tenor of the thing, the activities of the people and the speakers?

A. Well, one thing I thought different in that meeting from the kind of meeting I go to, I saw a good many colored fellows on the back row; I presume they were laborers. I am not sure to that.

Q. Well, they don't generally vote and they don't ordinarily attend meetings in this State, isn't that true?

A. There were quite a few there.

Q. Well, the reason you don't see them at political meetings in this state is because they have no right to vote?

A. Well, they have a right to vote in the general election.

Q. Well, let's stay with the primaries?

A. You didn't say anything about the primaries.

Q. Well, let's talk about the primaries—isn't that at least one good reason they don't attend?

A. I wouldn't attempt to say that is why they did or didn't attend.

Mr. Dickson: If the Court please, we will agree that it was a very peaceable orderly meeting.

[fol. 23] Mr. Wright: That is very good. Thank you.

The Witness: I told you that in the beginning.

The Court: Let the record show the agreement of counsel.

Mr. Wright: I believe that is all.

Mr. Dickson: That is all.

(Witness excused.)

SIDNEY LATHAM, a witness for the plaintiff, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Dickson:

Q. Your name is Sidney Latham?

A. Yes, sir.

Q. You are Secretary of State of the State of Texas?

A. Yes, sir.

Q. You hold that office at the present time?

A. Yes, sir.

Q. How long have you been in that office?

A. Since February 23rd of this year.

Q. I will ask you whether or not you have examined the [fol. 24] records of your office at our request, to ascertain whether or not Mr. R. J. Thomas has an organizer's card?

A. I have, yes, sir.

Q. As a labor organizer, does he have such a card?

A. I examined the records at about nine thirty this morning myself, and up to that time it had not been issued or applied for.

ADMISSION

Mr. Wright: Now, if the Court please, there is no question about that. We admit that he hasn't got one, and has made no application for one up to now.

The Court: All right, let the record show that admission.

Q. What would be necessary for Mr. Thomas to do, or to have done in order to have gotten an organizer's card, Mr. Latham?

Mr. Wright: I object to that because the law speaks for itself, and I think it is the best evidence of what he is required to do.

The Court: I am inclined to agree with counsel.

[fol. 25] Mr. Dickson: I think the departmental ruling with reference to the requirements of the law is important in the case.

The Court: If there is one, I believe I will let that in.

Mr. Dickson: Yes, sir.

Mr. Wright: I object to that, because the Secretary of State is not authorized to construe the law, and any construction the Secretary of State may make is certainly not binding on this Court or any other court.

Mr. Dickson: I think it is very important in this case, Your Honor.

The Court: The objection will be overruled.

Mr. Wright: Note an exception.

Q. Have you, as Secretary of State, been called upon to interpret and construe the law, Mr. Latham?

Mr. Wright: Same objection, if the Court please. This man is not authorized to construe the law, and he has no authority to do it; and any construction that he might make of the law would not be binding upon this Court nor any other court.

The Court: I will overrule the objection.

[fol. 26] Mr. Wright: Note an exception.

A. By circumstances I should say that I have been.

Q. Yes. You have issued in writing your construction of the various sections of the law?

A. Well, I wouldn't say as to all sections of it. I have prepared a—what we generally term a statement of policies which we follow in the administration of the Act.

Q. Now, with reference to Section 5, and the Section which requires an organizer's card, what is your departmental construction of that? Will you just read it into the record?

A. With reference to Section 5, did you say?

Q. Yes, sir.

Mr. Wright: May it please the Court I think it would be much better for the Secretary of State to simply introduce any document that he may have in connection with his construction of the law and the policy of his office under the law, rather than have him read excerpts from some document that he may have prepared in that connection. We would like to have it all in the record.

Mr. Dickson: We have no objection to that.
[fol. 27] Q. Have you a form of application that you have prepared?

A. Yes, sir.

Q. I would like to have that.

A. That (referring to paper) is a form of application which we have prepared and which is furnished free on request to all applicants, and they are requested to fill that out and return it to our office.

Mr. Dickson: The plaintiff offers this application form for organizers card in evidence.

Mr. Wright: May it please the Court, the defendant objects to the introduction of the exhibit for all the reasons recited in his motion to dismiss, his motion to quash, and his motion to dissolve.

The Court: The objection will be overruled.

Mr. Wright: Note our exception.

(Thereupon, the application for organizers card above referred to, identified as Plaintiff's Exhibit No. 7, was received in evidence, and same appears herein at page —, and is made a part hereof.)

Q. Now, will you read, if you have there, any construction or departmental construction which you have placed on the sections referred to or with reference to getting [fol. 28] an organizers card, any where in the Act?

Mr. Wright: Now, again, Your Honor, I think we are back to the same thing we started with. I object to any offering of excerpts out of any statement of policy of the Secretary of State in connection with House Bill 100. If he has got such a statement, I think it ought to all come in.

Mr. Dickson: The only reason I didn't ask for all of it, the rest of it includes other sections of the Act, but I don't mind—

A. The statement I have here is in response to the most numerous inquiries on the most common inquiries that

we were receiving from various unions, and to expedite our answers to those inquiries we prepared this statement and mimeographed it and sent it out as a form matter, in response to any inquiries that came into the office covering any phases of the Act that are covered by these statements here.

The Court: I will overrule the objection; but the defendant may put in any other parts he might deem material.

Mr. Wright: May it please the Court, in order to save time, may the defendant offer the entire thing at this point. [fol. 29] Mr. Dickson: I have no objection.

Mr. Wright: The defendant, may it please the Court, offers in evidence the paper headed "Policies of State Department Administration of House Bill 100, 48th Legislature (Labor Bill)", as identified by the witness.

(Thereupon, the paper above referred to, identified as Defendant's Exhibit No. 1, was received in evidence, and same appears herein at page —, and is made a part hereof.)

Mr. Dickson: Now, let the record show that the plaintiff, however, is offering only——

A. I believe paragraph nine is the first one there that touches on this phase of the Act.

Mr. Dickson: That the plaintiff, however, is offering only Sections 9 and 12 of the Instructions. I would like to read those to the Court.

The Court: All right.

(Thereupon Mr. Dickson read Sections 9 and 12 to the Court.)

Q. As a matter of departmental practice, if Mr. Thomas had before September 23rd applied, either in person or in [fol. 30] writing, to your office, giving his name and address, the name of the Union with which he was affiliated, and his credentials, would you have, as a matter of course, issued him an organizer's card?

A. If the further information called for on the application showed that he had not been convicted of a felony in the State of Texas or any other State, and was a citizen of the United States, or if he had been convicted of a felony, if his rights of citizenship had been restored by proper authority, all of which is our construction of what the Act requires, the card would have been issued.

Q. I see. Would any charge have been made?

A. No, sir.

Q. No charge at all?

A. No, sir; the Act authorizes the collection of no fees, either for the issuance of the organizer's card or for the filing of the financial statement.

Mr. Wright: Now, if the Court please, I again object to permitting this witness to construe the law. Any construction he may make of it would not be binding on any Court; and the law speaks for itself.

The Court: I agree with counsel on that, but I believe [fol. 31] I will overrule the objection.

Mr. Wright: Note an exception.

Q. How many labor organizers have applied for cards since the law was passed, Mr. Latham?

A. We have issued a total of two hundred and twenty-three up until about nine-thirty this morning; there are approximately, I would say, fifteen or twenty that are in process of correction. Since the Act became effective we have returned, roughly, forty or fifty applications, where they failed to give all the information or failed to sign the application or failed to attach the credentials, or some such defect as that. Out of possibly forty or fifty that have been returned to the applicant for correction or addition, all but, I would say roughly, fifteen or twenty have since been resubmitted in proper form, and the cards granted. There are possibly fifteen or twenty—that is only an estimate—that are now in the mails, going back to the applicant for correction; but none have been positively denied since the Act became effective.

Q. Have you issued any to C.I.O. Labor organizers?

A. Yes, sir.

Q. Approximately how many?

[fol. 32] A. Well, I didn't check the record for distinction between the C.I.O. or A. F. of L., or independent organizations, but there have been numerous ones issued to both C.I.O. and A. F. of L.

Mr. Dickson: That is all.

Cross-examination.

Questions by Mr. Wright:

Q. Mr. Latham, does your office have imposed upon it any duties like this—that is, the issuance of registration cards

or license cards in connection with any organization, any incorporated associations, except labor unions?

A. Well, I don't recall offhand an unincorporated association unless you might mean something of this sort,—we have a statute that requires perpetual care cemeteries to file financial statements in our office; then we have a statute that requires the issuance by our office of what is referred to in the statute as a gross receipts permit, and under that statute any corporation that is subject to the gross receipts tax of Texas is required to pay that tax to the State Comptroller, and then before they continue business in Texas that corporation is required to get a certificate from the Comptroller to the effect that his gross receipts tax has been paid, and then submit that certificate to our office, whereupon we are required to verify it from the Comptroller's records, and if in order then we issue a gross receipts permit to that company to transact business in Texas.

Q. Let me ask it this way, Mr. Latham—is your office required under any statute, for example, to issue registration or license cards to a person who organizes a church or who solicits membership for a church?

A. I know of no such statute. There is a provision authorizing churches to file the names and addresses of trustees of their property in our office.

Q. If they want to?

A. Well, so far as I know, the statute is not mandatory.

Q. Now, with respect to unincorporated associations, like Retail Merchants' Associations, or organizations like the Rotary Club, or organizations like the Elks Club,—is there any statute on the books that requires your office to issue registration cards or license cards to any people who might be engaged in organizing groups of that kind?

[fol. 34] A. Now, you are covering a lot of territory there—any statute on the books.

Q. So far as you know?

A. My recollection is there are something over ten thousand articles in the Civil Statutes.

Q. Well, let's put it very simply,—does your office do that, regardless of whether there is a statute on the books or not,—does your office issue any such registration cards?

A. Only where the association becomes incorporated. It enumerates churches, Rotary Clubs, and other voluntary associations of that sort.

Q. Of course, we are talking about unincorporated voluntary associations?

A. No, I know of no such statute.

Q. Now, let's take organizations of the character of a Chamber of Commerce, or the national association of manufacturers,—does your office currently require, under any statute, that anybody who goes out and solicits membership for an organization of that character, secure from your office a registration card or a license before doing so?

A. Not unless they come under the provisions of the [fol. 35] Securities Act of 1935. Now, under that Act any dealer in securities for any corporation that is operated for public sale, provided, I believe, there are fifteen incorporators and if the stocks are secured or offered for public sale, they are required to get a security dealers license; and then, under the Real Estate Act of 1939, I believe it was, all dealers in real estate are required to obtain a license before they can handle transactions of real estate for other people, or solicit sales or purchases of real estate. Now, under those two Acts, Real Estate and Securities Acts, we issue four or five different classes of licenses, one a real estate salesman's license, a real estate dealer's license—that is, issued to a firm, an oil and gas dealer's license, and a general securities dealer's license, for all of which there are stipulated statutory fees.

Q. That is all very interesting, Mr. Latham, but still you haven't answered my question. I simply want to know if you are issuing any of these licenses or registration cards to any Chambers of Commerce or National Manufacturers Associations?

A. No, sir, we do not issue them for the solicitation of membership. Now, if any of those organizations were [fol. 36] selling stock or real estate they would.

Q. I understand, but we are simply talking about solicitation of membership in an unincorporated organization?

A. No, sir, as far as I know, there is no statute requiring that.

Q. As far as you know, the labor union is the only voluntary organization that is required to secure a registration card or a license before a person is permitted to solicit membership in that voluntary unincorporated association,—isn't that true?

A. Yes, sir, as far as I know this is the only instance.

Mr. Wright: I believe that is all.

Redirect examination.

Questions by Attorney General Mann:

Q. Mr. Latham, if a foreign corporation whose business it is to publish a newspaper, should seek to do business in this State, must they or is it necessary that they secure a permit in order to do so?

A. Yes, sir, under provisions of Title 32 of the Revised Civil Statutes, any foreign corporation doing business in Texas is required to get what we call a foreign permit.

Q. In issuing your licenses to real estate dealers or [fol. 37] salesmen, are those licenses issued to the individual or are they issued to corporations?

A. Well, it might be either or both.

Q. In other words, is this or is this not true, if one presents himself to your office and files an application to engage in the real estate business, then if he meets the requirements of the law you are authorized to issue to him a real estate dealer's license?

A. Yes, sir.

Q. How much does he pay for that license?

A. For an individual salesman's license he pays three dollars a year.

Q. Now, if another individual presents himself as a—or let me put it this way,—if a dealer in securities makes application to you for a license for a number of salesmen in securities, do you or do you not issue those licenses?

A. If he complies with the law, yes.

Q. And what is the fee charged for that?

A. For a general securities dealer's license it is thirty-five dollars per year.

Q. Is it or is it not necessary for such applicants to be corporations; in other words, may they be individuals?

A. Oh, yes.

[fol. 38] Q. And they don't have to be unincorporated associations or corporations?

A. No, there is no distinction there. The individual can obtain the thirty-five dollar per year general dealer's license.

Q. Well, how much does it cost him to get that license?

A. That dealer's license?

Q. Yes, that dealer's license?

A. Thirty-five dollars.

Q. And how much does it cost for a salesman's license?

A. My recollection is it is the same. The oil and gas dealer's license is seventeen dollars.

Q. Mr. Latham, your office does not have anything to do with the licensing of insurance companies or anything like that?

A. No, they are under the jurisdiction of the Insurance Commission.

Q. Are you — lawyer. Mr. Latham?

A. Why, I have a license to practice.

Q. How much did you pay for that?

A. Well, let me see,—I believe the fee was twenty dollars for the privilege of taking the State Bar Examination at that time, and a dollar for the issuance of the license after [fol. 39] you passed the examination.

Q. Do you have to renew that application to the Supreme Court every year and pay a fee?

A. Yes, sir, I pay four dollars a year for the annual statutory renewal.

Attorney General Mann: That is all.

Recross-examination.

Questions by Mr. Wright:

Q. Just one or two questions, Mr. Latham. We lawyers have what the labor unions call a closed shop, don't we—either, we join the union or we don't practice, isn't that about the way it works?

A. Well, the general effect of the State Bar Act passed about 1937, I believe, was to authorize the Supreme Court to promulgate rules and set up the State Bar as a statutory legal entity and authorize the Court to fix annual dues for the right to continue in the practice.

Q. A person who does not belong to the Association can not practice, isn't that true—isn't that a requirement for the practice of law?

A. Well, that is the general effect of it, yes, to continue to practice you must automatically remain affiliated with [fol. 40] this legal entity that was set up under the State Bar Act.

Q. Now, one other question about these foreign corporations that come into the State and publish newspapers,—a great many churches publish newspapers that are cir-

culated nation wide, isn't that true? For example, I think the Methodist Church has such a paper,—isn't that true, or do you know?

A. Well, I wouldn't know exactly about that.

Q. Well, let me ask it this way,—do you know whether or not your office is requiring, or has attempted to require any church paper to secure the same sort of license that you mentioned in connection with the foreign corporation coming into the State, to publish a paper?

A. Well, now, I couldn't say right offhand. We have slightly more than eighty-two thousand domestic charters and foreign permits on file in that office, but I couldn't say with respect to any specific type, without consulting the card index.

Mr. Wright: I think that is all.

[fol. 41] Redirect examination.

Questions by Attorney General Mann:

Q. Mr. Latham, if an unincorporated association or an individual sought to issue securities and circulate literature concerning those securities to the public, must such individual or unincorporated association first secure from your office a permit before such securities can be issued?

A. Yes, sir.

Attorney General Mann: That is all.

Mr. Wright: That is all.

(Witness excused.)

Mr. Dickson: Plaintiff next offers in evidence a copy of an amended petition filed in Cause No. 68,722 in the 98th District Court of Travis County, in the case styled Congress of Industrial Organizations and others versus Sidney Latham, Secretary of State. Oh, I will just introduce the original. I see I have an extra copy of the original, which was filed—when did you file that?

Mr. Goodman: August 25th.

[fol. 42] Mr. Dickson: Filed August 25, 1943, in which R. J. Thomas is the plaintiff individually and as President of the U. A. W., and Gerald C. Mann, as Attorney General, and Sidney Latham, Secretary of State, and the District and County Attorneys of Travis County are the

defendants, and in which R. J. Thomas, the defendant in this case, challenges the validity of House Bill 100, and Section 5 under which we are proceeding in the present action.

(Thereupon, the amended petition above referred to, identified as Plaintiff's Exhibit No. 8, was received in evidence, and same appears herein at page —, and is made a part hereof.)

Mr. Wright: May it please the Court, we have no objection to the introduction of the exhibit. We think, however, that to make the record complete that there ought also to be an offer of the State's Answer in the case, so that the entire matter will be in evidence. I would offer one, except I don't have it. If you have one, I will be glad to do it.

Mr. Dickson: Well, I will give you one, and you can offer it.

Mr. Wright: All right. May I do it at this time?
[fol. 43] Mr. Dickson: That is all right, yes.

Mr. Wright: May it please the Court, the defendant offers in evidence a copy of the Answer of the defendants in Cause No. 68,729, styled Congress of Industrial Organizations, et al. versus Sidney Latham, Secretary of State et al. in the 98th Judicial District Court in Travis County, Texas.

(Thereupon, the Answer above referred to, identified as Defendant's Exhibit No. 2, was received in evidence, and same appears herein at page —, and is made a part hereof.)

Mr. Dickson: If the Court please, the State rests on the Motion for Contempt.

STATE RESTS.

[fol. 44]

Defendant's Evidence

MOTION FOR JUDGMENT

Mr. Wright: At this time the defendant comes and moves that the Court render a judgment finding the defendant not guilty of any contempt of the Court, and in that connection he urges all of the matters, or incorporates in the

motion all of the matters set forth in his motion to dismiss, his motion to quash and his motion to dissolve.

The Court: That motion will be denied.

Mr. Wright: Note our exception. Now, may it please the Court, we also have—I would like to file the defendant's answer to the complaint filed by the State. The defendant also asks leave of the Court to file his motion to dismiss the complaint, his motion to dissolve the temporary restraining order, and his motion to quash the contempt proceedings, all of which is incorporated in one document.

The defendant also—in that connection, may it please the Court, may I have the record to reflect that these are the documents we referred to earlier as not having on hand.

The Court: Yes, they were considered by the Court then as having been filed.

[fol. 45] Mr. Wright: Yes, sir. The defendant would also ask leave of the Court, and move the Court to permit him to have the matters set up in his answer to the complaint and in his motion to dismiss the complaint and to dissolve the temporary restraining order, and to quash the temporary proceedings as being also responsive to the temporary proceedings, without repleading all of them.

Mr. Dickson: I don't know; I haven't had a chance to read all of this. Do you mean you have one motion and want to file it to the pleadings we have filed.

Mr. Wright: I am asking the Court for leave to have the two instruments we have just filed to also be considered as pleadings in connection with the contempt proceedings.

The Court: In other words, those matters that go to the authority of the Court, that they should be considered in this matter.

Mr. Dickson: I have no objection.

Mr. Wright: Thank you.

The Court: Just so we can understand it, the Court will say, then, that all of the motions will be considered [fol. 46] as an answer to the motions citing the defendant to appear and show cause why he should not be held in contempt.

Mr. Wright: Yes, sir. Now, also, may it please the Court, I still am unable to supply the pleading which I expected to file in particular response to the contempt proceedings, but I would like to state again to the Court the substance

of what I hope to file. The pleading will encompass a not guilty plea on the part of the defendant, a general denial on the part of the defendant, and will set up all of the constitutional matters raised by the defendant in the pleadings already on file by him.

The Court: All right.

Mr. Wright: May it please the Court, the defendant would also like to offer as exhibit in evidence the pleadings to which we have referred.

(Thereupon, the pleadings above referred to and offered in evidence, being included in the Clerk's transcript, are not copied herein.)

Mr. Wright: Shall we proceed?

The Court: Yes, sir.

Mr. Wright: We shall call Mr. R. J. Thomas.

[fol. 47] R. (ROLLAND) J. THOMAS, the defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Goodman:

Q. Mr. Thomas, what is your full name?

A. Rolland J. Thomas.

Q. And what is your address?

A. 10037 Somerset Road, Detroit, Michigan.

Q. And where were you born?

A. East Palestine, Ohio.

Q. What is your present occupation?

A. I am President of the United Automobile, Aircraft and Agricultural Implements Workers of America, affiliated with the Congress of Industrial Organizations. I am a Vice President of the Congress of Industrial Organizations; I am a member of the National War Labor Board, and a member of President Roosevelt's Labor Advisory Committee.

Q. How long have you been President of the United Automobile, Aircraft and Agricultural Implements Workers of America, which I will refer to hereafter for brevity as the U. A. W., C. I. O.?

A. I was elected President four years ago last March.

[fol. 48] Q. And prior to that, what was your occupation?

A. I was International Vice President of the United Automobile Workers.

Q. For how long were you International Vice President?

A. For approximately eighteen months.

Q. And prior to that time what was your occupation?

A. I was President of Chrysler Local No. 7 of the United Automobile Workers.

Q. How long had you been President of that Local Union?

A. Approximately four years.

Q. That brings us back to what year, figuring backwards now?

A. About 1932, I believe.

Q. Were you working at the Chrysler Plant at that time?

A. I was.

Q. That is in Detroit, is it?

A. It is.

Q. And what was your occupation there?

A. Welder.

Q. And how long had you been employed in the Chrysler Plant?

A. At that time I had been employed there, I should say, approximately four years.

[fol. 49] Q. As a welder?

A. As a welder.

Q. Are you married?

A. Yes.

Q. Any children?

A. One.

Q. Now, approximately how many members are there in the U. A. W.-C. I. O.?

A. One million.

Q. And approximately how many members are there in the Unions affiliated with the Congress of Industrial Organizations known as the C. I. O.?

A. Five million.

Q. And are these members of the U. A. W.-C. I. O. employed and living in a number of states throughout the United States?

A. They are.

Q. And do you have employees who are members of your Union, the U. A. W.-C. I. O. living in the State of Texas and working in this State?

A. I have.

Q. And does the C. I. O. have affiliated organizations whose members live and work in the various forty-eight [fol. 50] states of the United States?

A. They do.

Mr. Goodman: Now, may it please the Court, I have a suggestion that might save time, if it is agreeable to the Court and counsel,—Mr. Thomas had occasion recently to prepare and sign an affidavit which was filed in a case involving the constitutionality of a law in Kansas, where a similar question was involved, in which he stated the nature of the operations of the labor unions, particularly the U. A. W.—C. I. O. We feel it essential that the character of these operations be given in this hearing, and be a part of the record, and I would like to present to Mr. Thomas this affidavit, and instead of questioning him as to the various matters which takes a few pages, I will ask him general questions as to what the operations of a labor union consist of, and then have him refresh his recollection from this document.

Mr. Dickson: We don't want him reading from that. I have seen that before, I think.

Mr. Wright: No, you haven't seen this before.

(Further discussion omitted.)

[fol. 51] The Court: I hold that the evidence rule will permit him to use that, to refresh his memory.

Mr. Goodman: Yes, thank you.

Q. Mr. Thomas, I would like to have you state in general what the U. A. W.—C. I. O. is, how it functions and how it operates, and with particular reference to its operation in the State of Texas?

Mr. Dickson: If the Court please, I think I will object to this line of testimony as being immaterial and irrelevant to any issue in this case. This is a hearing on a contempt charge filed against this person, and regardless of what he belongs to back home and what his organization and affiliations and connections are could not make a particle of difference in this hearing, which is on the question of whether he is in contempt of this Court's orders.

The Court: I believe I will overrule the objection.

Mr. Goodman: It has a bearing on the constitutionality of the question, if Your Honor please.

Mr. Dickson: Note our exception.

A. The United Automobile Workers is a voluntary unincorporated association. As I stated before, we have ap-[fol. 52] proximately a million members in the country. There are approximately twenty thousand of our members who live in the State of Texas. These members are organized into autonomous local unions, of which we have eight in the State of Texas. The principal office of the organization, that is, the International Union, is in the City of Detroit, State of Michigan. We have a constitution and by-laws. The constitution is adopted at an annual convention held by our International Union, and within that constitution local unions set up their own by-laws under which the local unions themselves have an autonomy, providing they do not depart from or conflict with the International Constitution. Each local union, and that means the local unions we have in Texas, are included, sends delegates to this International Convention. Those delegates which are elected from each local union are published, depending on the amount of membership which is in the local union going to the convention. These delegates exercise their freedom in the choosing of the officers of their union, in writing an International Constitution, and they report back to the respective local unions. I might say that those local union delegates which are elected to attend [fol. 53] the International Convention are elected by democratic vote. We call meetings, and meetings must be advertised at least one week in advance to all the membership of the local union, for the purpose of electing these delegates. It is also a requirement of our constitution that one week's time must elapse and be published to all the membership between the time of the nomination and the election of delegates to the International Convention. These delegates also from time to time in that annual conventions amend the International Constitution. That is what I tried to say, rather than adding to the constitution or taking away; it also amends some of the sections of the International Constitution. I might say that the International Convention, according to our constitution, is the highest governing body in our organization. Between International Conventions the local unions are the highest governing body, provided they do not depart from the constitution which they adopted in the International Convention. The highest policy making body which they, too, can not depart from the International Constitution procedure, is the In-

ternational Executive Board, which has regular meetings, and also under our constitution can have, if they de-[fol. 54] sire, special meetings. They are the highest governing body on policy between conventions, and, as I say, they have the right within themselves of calling a meeting at any time. On matters of policy which are not covered by the International Constitution, between International Executive Board Meetings, I have the highest authority as President of the International Union. In case of my departure from the country, sickness or death, the Secretary-Treasurer is the next highest officer in the union; and immediately after that—immediately following that, in line, we have two International Vice Presidents, with equal authority. If they should all leave the country or become incapacitated or die, then the International Executive Board has the right to fill these offices until the next regularly called or specially called convention. I might say that our local unions are not only a part of the International Union, but according to our International Constitution each individual member of our organization is affiliated with and a part of the International Union. Our International Union is a party to all contracts, written or negotiated with man-[fol. 55] agements of our local unions. Our International Union and our local unions are assembled and associated together for the purpose of—I might say, gathered together in a voluntary unincorporated association for the purpose of forming and joining and assisting other organizations so formed, such as in this case we are trying to assist the oil workers union. We are associated together also for the purpose of collective bargaining which is guaranteed to us by the National Labor Relations Act, and so that people who join our association can have individuals or representatives of their own choosing to represent them in such collective bargaining negotiations. These collective bargaining negotiations which we are—have this association for, deal with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment, and for their mutual aid and protection. I might say, to effectuate many of these purposes in the local unions, the members of our union gather together to discuss the things which I have mentioned before, such as wages, hours, working conditions, and in a democratic manner reach certain conclusions in which the [fol. 56] majority wish to take up and bargain with manage-

ment on. We also disseminate this information to the public and to fellow employees who have not joined in the association, and to public officers and representatives of government of the various states, including Texas and the United States, facts, information and opinions concerning the United Automobile Workers International Union and its locals, their purposes and objectives, problems of their members and of the wage earners generally, the benefits of the National Labor Relations Act and other Federal and State Statutes, and the rights guaranteed thereby. We — I mean by we — our International Union, maintains educational programs, we foster training and educational courses in our local unions, including those in this State — The State of Texas. We distribute educational material to our locals; we maintain a National publication known as "The Auto Worker". Local unions, many of them have their own publications.

Mr. Dickson: May I interrupt here to ask what you mean by "we"?

A. The International Union.

Mr. Dickson: Of the——

[fol. 57] A. Of the United Automobile and Aircraft Workers of America.

Mr. Goodman: And Agricultural Implement Workers.

A. Yes, sir, Agricultural Implement Workers.

Mr. Dickson: The C. I. O.?

A. Affiliated with the C. I. O. I might say this, it might help you, that in all cases where I say "we" that is who I am referring to.

Mr. Dickson: You include the C. I. O. also?

A. I include affiliated with the C. I. O., yes. I might say that in practically all states we maintain a legislative service, so that we can give information on laws and so forth to our membership, and keep the local union informed both on Federal and State legislation, and I might say we also keep them informed on proposed legislation. I might say that we spend just on these services, on educational and legislative, approximately nine hundred thousand dollars a year in keeping our member-informed. Also, one of our purposes within the local unions is to build up not only for the purposes of collective bargaining, but to have

a better relationship between workers, I might say fraternal; we also make an effort to enhance the dignity of labor and elevate it to a higher level of good citizenship. I might say it is to this end that the local unions of the U. A. W. in the State of Texas are affiliated with the Industrial Union Council of the State of Texas. I might say that council is a part of the C. I. O.—that is the Congress of Industrial Organizations wherein the local unions in the State, regardless of what International Union they are affiliated with—that is, provided the International Union is affiliated with the Congress of Industrial Organizations within the locals of the various states, and it is true in the State of Texas, those locals affiliated with the State Council which is affiliated with the National C. I. O. The purpose of that council is set up for practically the same purposes which I went over a few minutes ago of why our own international union is set up—for the purposes of collective bargaining, education, and for the purpose of keeping their membership also informed on legislative matters, pertaining mainly in a council like that to the State of Texas. I might say that the organization is also set up to secure legislation in the interests of [fol. 59] working people and to influence public opinion by a peaceful and legal manner in favor of organized labor and better working and health standards and to aid and encourage the labor press of America, to promote good citizenship, to establish better communication between the labor unions in Texas to secure united and harmonious action in all matters for the welfare of organized workers, to circulate labor literature, to make known the opponents of organized labor, and to discourage and to prevent the growth of child labor, and to prevent the practice of black-listing, to give scope and power to all attempts to enforce fair conditions, to endorse or protest wherever the interests of labor and people in Texas may be involved, to encourage trade union organization for the protection of the rights of wage earners and the advancement of their special vocations and in general to promote the closest possible unity among all labor and people in matters of general concern.

In order to achieve uniformity of policy, joint action and the closest possible mutual cooperation the U. A. W. maintains more than 300 representatives throughout the nation whose function it is to represent the U. A. W. in

the region, assist the locals in the region, direct the organization of new locals, inform locals in the region of U. A. W. policies generally and as they relate to specific problems confronting local unions and to participate in the solution of such problems where assistance is sought by local unions or where the interests of the U. A. W. are involved. Texas is included in such a region.

In addition, it has been the practice of the U. A. W. to maintain contact with its locals throughout the country, including Texas, through U. A. W. visiting representatives. These visits are not intermittent but are a regular part of the operations of the U. A. W. in relation to its locals. I might say and add there that to my knowledge, practically all our representatives in the State of Texas are property owners in the State of Texas, and are citizens of this State. Visits to Texas locals involve approximately, I should say, twenty-five number of representatives—that is aside from the regular representatives who come into and out of the State intermittently, and I would say at about twelve occasions per year. They remain in Texas for periods varying from one day to almost continuously. It is customary for such representatives to contact the leadership [fol. 61] of locals in Texas as well as elsewhere, to meet with representative committees of such locals, to address the membership of such locals at membership meetings and in plants and ships where a local has not been organized to meet with members of the U. A. W. in an effort to assist and further such organization.

Q. Would you say, Mr. Thomas, that this description, in general, of the functioning of the U. A. W., both in its membership and its locals and its International, and its relationship with other unions, is typical of international unions and local unions affiliated with C. I. O.?

A. Yes, they all pretty closely have the same procedures.

Q. Is the union of U. A. W. or any other union, so far as you know, engaged in business, in any commercial enterprise, or does it operate for the purpose of making profits?

A. It does not; they have no commercial activities at any place that I know of.

Q. Is any labor union that you know of, from your experience over the years, operated for the purpose of making a profit?

A. No.

[fol. 62] Q. It is operated for the purposes which you have just indicated in your statement?

A. That is right.

The Court: It is apparent, I believe, that we won't be able to finish the record within any reasonable time; so at this time we might as well adjourn and come back after lunch.

Mr. Goodman: At what time.

The Court: Let's make it one thirty.

(Thereupon at 12:05 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

[fol. 63] Saturday, September 25, 1943

Afternoon Session, 2 P. M.

ROLLAND J. THOMAS, the defendant, resumed the witness-stand, and testified as follows:

Direct examination.

Questions by Mr. Goodman:

Q. Mr. Thomas, which paid members of your Union solicit workers for membership?

A. Well, first, all the International officers do, including myself, but not to a very great extent. We usually go out and talk to mass meetings—big meetings, and so forth. We very seldom solicit people to join the Organization as individuals. Then the International Executive Board does. There are eighteen members of our International Executive Board. They get into that soliciting and organizing to a much greater extent. The way organization work is generally done,—and I think I will approach it from that angle to show you how many people become involved,—suppose that in the City of Austin there is a plant; somebody usually gets in contact with us and says, "We want an organization in this plant." I will send out, or the Regional Director, either from the International Office or [fol. 64] the Regional Office,—will send out an organizer, or an International representative we call them, to make contacts with the people of that particular plant. They perhaps might first contact the person who wrote the letter

in. If they have no contacts, they go out and make contacts. I mean they talk to a worker wherever they get the chance. Now, we have those kinds of International representatives or Regional representatives all over this country making these contacts. After they make a number of contacts they will call a meeting. At that meeting they will urge upon the workers in that particular plant to contact the workers they are working with. That worker working within the plant actually becomes then an organizer himself, because he discusses Union problems with the fellow who works on a machine with him or the fellow who works on the job with him. Further meetings are called, which are bigger meetings. The group may become large enough in a particular industry to form a local union and to elect officers. Those officers of that local union, it then becomes their duty to make contacts and to convince workers that it is to their interest to belong to a labor organization. The local union will, as it grows larger, perhaps have [fol. 65] enough money in its treasury to put on its own organizers, who would get paid for organizing by the local union. That union may get the plant completely organized in that industry, but they might have a competitive problem at some place nearby. They may decide to go out and organize this competitive industry. They may have union officials who become full-time officers, if the local is big enough, to be paid by the local union to take care of organizing and soliciting memberships. They perhaps will elect a bargaining committee. That bargaining committee may get paid a certain amount by the local union. Meetings will be called outside the plant, or outside the premises, to develop organization within that particular territory. The fact of the matter is, going through the ramifications of organization, practically every single individual who belongs to the organization at some time or another from top to bottom solicits membership for his or her organization.

Q. Do persons known as shop stewards solicit membership?

A. There are shop stewards, and I might say for the record that where we organize a plant we have a shop steward elected to take care of the individual grievances for I would say approximately every thirty people within a plant. These shop stewards many times are paid part [fol. 66] time by the local union, and that is one of the

shop stewards' main jobs is to organize and solicit memberships into the union.

Q. Is this situation generally true in all unions affiliated with the C. I. O., and in unions generally?

A. It is.

Q. I show you this booklet, which I will ask the Reporter to identify as Defendant's Exhibit Number 6, and I will ask you what that is.

A. That is the Constitution of the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C. I. O.

Q. That is the Constitution, with all amendments, that is in force at the present time?

A. That is correct.

Q. And that has been in force during the past year?

A. Yes; during the past fourteen months.

Mr. Goodman: I will offer Defendant's Exhibit No. 6 in evidence.

Mr. Dickson: No objection.

(Thereupon the booklet above referred to, identified as Defendant's Exhibit No. 6, was received in evidence, and original copy of same by agreement of counsel, accompanies this record, and is made a part thereof.)

[fol. 67] Q. I will show you booklet which has been marked by the Reporter as Defendant's Exhibit No. 7, and I will ask you what that is.

A. This is the Constitution of Congress of Industrial Organizations.

Q. And that is the constitution that is now in force, and has been during the past year?

A. Well, it will be a year in November.

Mr. Goodman: I will offer Defendant's Exhibit No. 7 in evidence.

Mr. Dickson: No objection.

(Thereupon the booklet above referred to, identified as Defendant's Exhibit No. 7, was received in evidence, and original copy of same, by agreement of counsel, accompanies this record and is made a part thereof.)

Q. I show you a booklet which has been marked by the Reporter as Defendant's Exhibit No. 8, and ask you what that is.

A. That is the Constitution and By-Laws of the Oil Workers International Union, affiliated with the Congress of Industrial Organizations.

Q. Is that the same International Union which sponsored this meeting at Goose Creek on September 23rd?

A. That is correct.

[fol. 68] Mr. Goodman: I will offer Defendant's Exhibit No. 8 in evidence.

(Thereupon the booklet above referred to, identified as Defendant's Exhibit No. 8, was received in evidence, and original copy of same, by agreement of counsel, accompanies this record and is made a part thereof.)

Mr. Dickson: We have no objection.

Q. Did you attend a mass meeting at Pelly, Texas, the evening of September 23 of this year?

A. Yes.

Q. Who invited you to come to that meeting?

A. An official of the Oil Workers Union.

Q. And approximately how long before the meeting were you invited to come there?

A. I believe it was about six weeks ago. It was at the Oil Workers Convention at Fort Worth, Texas. I believe it was about six weeks ago. That is only an approximate figure.

Q. And did they tell you what they wanted you to do at the meeting?

A. Yes.

Q. What was that?

A. They told me that there was a plant of the Humble Company, they used the name Houston to me all the time, or Goose Creek; I didn't hear anything about Pelly at [fol. 69] that time—but they said they had an organizing drive going on there, and that they had had a hearing before the National Labor Relations Board for an election in that plant. They were, of course, through their election, trying to get collective bargaining rights in that plant; and they asked me—they thought by this time there would be a date set for that election. As I understand, there was a hearing held, but no date set there.

Q. A hearing before the National Labor Relations Board?

A. Yes. They asked me to come there to make a speech to those workers for the purpose of helping them out in their organizing drive and getting people to join their union.

Q. When did you arrive at Houston in order to deliver this address?

A. I arrived in Houston September 28th about eight-thirty at the Airport.

Q. It couldn't be September 28th. The 23rd was the date of the meeting.

A. It was the evening of the 21st.

Q. Now, prior to the time that you arrived in Houston had you issued any statements publicly or otherwise?

A. I did not.

[fol. 70] Q. I mean with reference to this meeting, or speaking of the meeting?

A. I issued no statements.

Q. Did you make any statement to the effect that you had come here for the purpose of getting yourself arrested?

A. No, sir.

Q. Did you make any public statement to the effect that you would come here to test the law?

A. No, sir.

Q. Now, after you arrived on the evening of September 21 at Houston did it come to your attention that a statement had been attributed to you, and which was published in the press, to the effect that you had come here to get yourself arrested and to test the law?

A. That is correct. The first that came to my attention, somebody drew a newspaper to my attention, and made the statement that I had come to Texas to test the law, and I had come with my attorney, Ernest Goodman. The fact of the matter was that I didn't know that Ernest Goodman was coming to Texas at that particular time.

Q. Now, at that time, and during the day of September 22, was there further publicity in the papers in connection with the statement that you had made?

A. There was.

[fol. 71] Q. And were statements reported in the press to the effect that if you did speak without obtaining an organizer's card you would be prosecuted in accordance with the law?

A. Yes; I think that was brought to my attention.

Q. Were you served with a restraining order of this court prior to the time of that meeting?

A. I was.

Q. And do you know when that was, approximately?

A. I believe the time was about two twenty-two p. m., on Thursday, September 23.

Q. It was the afternoon of the same day on which you were to deliver the speech?

A. That is right. The fact of the matter is that the reason I recall the time, a newspaper reporter called me and said he had a report from the Sheriff's office that I was trying to evade the Sheriff, and I called the Sheriff's office and told him exactly where I could be located, and I remember I was looking out the window from the telephone booth when I was handed this restraining order, and I noticed the time as two twenty-two.

Q. Now, after you had discovered that there was a lot of publicity concerning your proposed talk at this mass meeting, and the issue had been raised as to whether you would [fol. 72] solicit members without an organizer's card, did you check the law?

A. Yes.

Q. And did your attorneys explain to you what the law was and tell you of it?

A. Yes; in fact, I checked it before that.

Q. And then after you received the restraining order of this court did you read the restraining order?

A. I did.

Q. Now, had you known prior to this time that the C. I. O. and the U. A. W. and other organizations, including yours, had filed a bill of complaint in the State of Texas, which has been introduced here as an exhibit, seeking to have the courts declare this law unconstitutional?

A. I did.

Q. And did you know that the provision of this law known as Section 5, which requires that labor organizers shall get an organizer's card before soliciting for memberships, was one of the provisions of the Statute which had been attacked by you and other complainants in this bill of complaint?

A. I knew that.

[fol. 73] Q. Did you also know that the Attorney General of the State of Texas, who is defendant in that case, had filed an answer in which he claims that the court had no

jurisdiction to determine the constitutional issue in that lawsuit?

A. I did.

Q. You had been informed of that?

A. Yes, sir.

Q. Now, after you had read the law, and you say that you had read reports to the effect that if you delivered a speech in which you solicited a member for the union you would be arrested?

A. Yes, sir.

Q. And did you determine that you would subject yourself to the possibility of arrest under the law in order to test the constitutionality of that provision?

A. I did.

Q. And you were willing to do that?

A. Yes, sir.

Q. Now, after you received the restraining order of this court did you decide to deliver a talk in which you would solicit a member?

A. I would rather say that I had decided not to change my position. I had announced I was going to talk, and that decision had been made.

[fol. 74] Q. The decision was made on the basis that you wanted to test the law in such a way that the jurisdiction of the Court would not be questioned; is that right?

A. That is correct.

Q. And you read the temporary restraining order that was issued upon you?

A. I did.

Q. You knew it was an order which restrained and enjoined you from soliciting memberships in Local Union No. 1002 and members in Local Union No. 1002, and from soliciting memberships or members in any other union without first obtaining an organizer's card?

A. That's right.

Q. I will ask you to state, Mr. Thomas, why you went ahead and delivered a speech that evening in which you solicited members for the Union after you had received this restraining order?

A. Well, after knowing all the facts,—the answer, as I understood from the Attorney General was that there had to be some act committed before it could come into the jurisdiction of the courts; and also being of the opinion very definitely that this law certainly violated the right

of free speech and freedom of the press; and also having read that I must first obtain an organizer's license or permit, whatever it is called, no matter how easy it was to get, I still thought that, slight as it was, was a restraint on free speech, and any law-making body who can put any restraint on free speech, no matter how slight it is, or how little it is, can go further and can finally prohibit all freedom of speech and freedom of the press.

Q. Did you also conclude that the restraining order in so far as it prevented you from asking somebody to become a member of your union without your having a license was unconstitutional for the same reason?

A. I believe so, yes.

Q. And what time did you arrive at the meeting approximately?

A. I arrived at the meeting, I believe, approximately seven thirty. It might have been a few minutes later than that.

Q. And was the meeting held on the outside?

A. I want to change my last answer. It was eight o'clock or a little later.

Q. And was the meeting held on the outside.

A. It was.

Q. And were people seated around in chairs?

A. They were.

Q. And where was the speaker's stand?

[fol. 76] A. Well, they had a truck brought up beside the City Hall wall. There were lights strung out, with seats around. One of the reasons, they told me, it was outside, there were too many people there to get inside. There were people seated around there, and it was close to a sidewalk. There were many people sitting on the sidewalk. There were many sitting in automobiles around there; and people were standing across the street.

Q. And the speakers, including yourself, sat on the body of the truck?

A. That is correct.

Q. And spoke through a microphone installed on the truck?

A. That is right.

Q. And do you know approximately how far Pelly is from Houston? Is it approximately twenty to twenty-five miles? Would that be about correct?

A. It would be purely a guess with me. I would say something approximately that.

Mr. Goodman: Will counsel agree it is approximately that distance?

Mr. Dickson: Yes.

Q. Is the Humble Oil Company plant situated at or near Pelly?

A. That is my understanding. I have never seen the plant.

[fol. 77] Q. This meeting had been called by the Oil Workers International Union of C.I.O.?

A. It had.

Q. And the people at the meeting were, so far as you were able to find out, employees of the Humble Oil Company?

A. I guess most of them were, outside of the law enforcing agencies.

Q. You mean there were a number of members of law enforcing agencies around there?

A. Yes, sir; there were.

Q. And the meeting was not restricted to members of the Union?

A. No; it was not.

Q. And the purpose of the meeting was to obtain members among employees of the Humble Oil Company who came to the meeting who were not members?

A. That is correct.

Q. Was there any charge made for anybody to come to the meeting?

A. No.

Q. I will show you what has been marked as Defendant's Exhibit No. 9, and ask you what that is?

A. This was a program that was put out in advance of the meeting. As I understand, it was distributed to the [fol. 78] plant and various other places around that community, and stating that I and others were going to speak at that meeting, and invited them to the meeting.

Mr. Goodman: I will offer Defendant's Exhibit No. 9 in evidence.

Mr. Dickson: No objection.

(Thereupon the sheet above referred to, identified as Defendant's Exhibit No. 9, was received in evidence, and same appears herein at page —, and is made a part hereof.)

Q. Now, the meeting opened shortly after eight o'clock in the evening?

A. It did.

Q. And do you know who the first speaker introduced by the Chairman was? You may look at the program to refresh your recollection.

A. I don't recall who the Chairman was.

Q. The Chairman introduced the various speakers, did he?

A. Yes.

Q. And the persons who are listed on that program did speak at the meeting, did they?

A. They did.

Q. Will you tell us who they were?

A. Well, the Mayor of Pelly, Mayor Olive, spoke first. I cannot give them in order how they spoke.

[fol. 79] Q. Well, without putting them in order.

A. I spoke, and C. M. Massengale, and Martin Burns. C. M. Massengale was Assistant National Director of the Oil Workers Organizing Campaign. Martin Burns spoke as representative of the United Steel-workers of America, which is affiliated with the C.I.O. John Crossland spoke as Sub-Regional Director of the C.I.O. John Livingstone spoke. That is not on this program. He spoke. He is an International Board member, and Regional Director of this area for the United Automobile Workers. I think that is about all.

Q. Did the other speakers there solicit members—solicit workers to become members of the Oil Workers International Union or the Local of the Oil Workers International Union?

A. I think all speakers who spoke did, including the Mayor of Pelly.

Q. And were you the last speaker?

A. Yes.

Q. Did you have your speech written?

A. I did. That is, I had practically all of it written. I started off my speech with a story that was not in it, and I wound up by putting a little more emphasis on asking people to join the Union.

[fol. 80] Q. I will show you what has been identified as Defendant's Exhibit No. 10, and ask you whether that is a copy of the written speech that you delivered that night?

A. Well, it is not the complete speech. As I said, there were additions at the beginning and later. That is practically all of the speech.

Q. Prior to the time you started the speech did you tell a story?

A. I did.

Mr. Goodman: I will offer Defendant's Exhibit No. 10 in evidence.

Mr. Dickson: The only objection we have to it, it is not complete, as admitted by the witness. It is not all of his speech.

Mr. Goodman: As far as it is complete, I think it is admissible.

Mr. Dickson: We would like to have the complete speech.

Mr. Goodman: I think the record ought to contain, so far as possible, just what Mr. Thomas said. Now, I feel that the speech ought to be written into the record. I will ask Mr. Thomas to read it into the record; but before doing that the question arises as to whether you feel it is necessary [fol. 81] for him to tell the story that he delivered before the speech was given.

Mr. Dickson: We will waive the story.

Mr. Goodman: All right. I am sure Mr. Thomas would be glad to tell it, because it is amusing. As far as what was said by Mr. Thomas subsequent to the speech, I will ask him to state that after he reads this into the record.

Mr. Dickson: We waive the necessity of his reading it into the record.

The Court: Suppose we omit the reading of it at this time. We will just consider it in the record.

Mr. Goodman: I think the Court should read the speech, because it does disclose the approach of the defendant towards the question of contempt.

The Court: It may be material at this point, but I wish to save time, and you can give it to the Reporter to put in the record.

Mr. Goodman: I merely want to call it to the Court's attention, because I think the Court should have the benefit of it in determining the question here.

Q. Now, Mr. Thomas, what did you say following the speech, and why did you say anything further than what was contained in the written speech?

A. Well, I had this speech all prepared when I went to [fol. 82] this meeting. I had heard when I was there a rumor that I would not be arrested for soliciting unless I solicited a certain individual. If it was just a mass solicitation there was a possibility there would be no arrest. I wanted to be sure of a test of the constitutionality of this law, so when I was sitting on the platform where the other speakers were speaking I asked Mr. Massengale, who was in charge of the organization of the Oil Workers Organizing Campaign, if he did not have some application cards in his pocket, and I took a batch—a dozen or so—of these application cards and laid them up on the stand in front of me. I asked several people whom I knew there to find out some individual's name for me in that crowd, and I got the name while I was speaking. I delivered the speech as I have it written here, and when I was through with that speech, the name which had been handed to me was Pat O'Sullivan. I was told where he was sitting in the audience. I had never seen the man before in his life, and I have never seen him since I might say; but I looked down at the man who they told me was Pat O'Sullivan and I said, "Pat O'Sullivan, I want you to join the Oil Workers Union. I have some application cards here, and I would like to have you sign one." I went on from there and I [fol. 83] asked everybody in the crowd who was not a member of the organization to come up and if it was necessary I would personally sign him to these application cards. As I recall it, I think that is just about the gist of everything I said outside of my written speech there,—that is, at the end of it.

Q. Now, after your speech did the Chairman of the meeting with a few remarks call the meeting to a close?

A. Well, he gave everybody the opportunity—he made the same sort of appeal I did and asked them to join the Union, and then adjourned the meeting.

Mr. Goodman: I offer the written speech of Mr. Thomas as Defendant's Exhibit No. 10.

(Thereupon, the speech above referred to, identified as Defendant's Exhibit No. 10, was received in evidence, and same appears herein at page —, and is made a part of this record.)

Q. During the whole time you were there was the meeting a peaceful one?

A. It was.

Q. Was there any trouble of any kind? †

A. None at all.

Q. After the meeting what happened?

A. I stepped off the truck that we were speaking on, and a gentleman walked up to me whom I did not know and [fol. 84] shook hands with me, and I believe he told me he was a deputy sheriff, and told me I was under arrest, and asked me if I objected. Well, I never object when I am under arrest.

Q. Well, did he take you to other persons who were also placed under arrest for soliciting?

A. Well, he took me out to the street. I presume it was another deputy sheriff driving the car, and when we got out to the street then we were joined by two of the other speakers.

Q. Mr. Massengale and Mr. Crossland?

A. Yes.

Q. Was there any trouble created or disturbance created as a result of these arrests?

A. There were no disturbances. A lot of people came out on the sidewalk and watched us get into the car and shouted a lot of encouragement to me.

Q. Did the deputies take you to the office of the Justice of Peace?

A. Yes, sir.

Q. And were complaints filed against you, and Mr. Massengale, and Mr. Crossland?

A. Yes, sir.

Q. For soliciting members in the Union without first [fol. 85] obtaining an organizer's card under House Bill 100, Section 5?

A. That is correct.

Q. And were you released on bond?

A. I was.

Q. At the Justice of Peace's office you were released on bond?

A. That is correct.

Q. You are now out on that bond?

A. That is right.

Q. And the same is true of Mr. Crossland and Mr. Massengale?

A. Yes, sir.

Q. Now, after that, did you go back to your hotel in Houston that same evening?

A. Yes, sir.

Q. Had you previously made arrangements to go to Dallas the following morning?

A. Before I left Detroit I had arrangements made to go to Dallas. In fact, I had my air-line ticket in my pocket, and the schedule all worked out, to go to Detroit.

Q. Did you leave at approximately eleven thirty yesterday, September 24?

A. Eleven twenty, yes.

Q. And you arrived at Dallas about one o'clock?
[fol. 86] A. Yes, sir; one five.

Q. Were you met by a representative of the U.A.W. of Dallas at the airport?

A. I was.

Q. Were you told by them that there was an attachment for your arrest issued by this court?

A. Yes, sir.

Q. And did you go to your hotel in Dallas?

A. I did.

Q. And did you get in touch with me?

A. Yes.

Q. And did you discuss with me this attachment that had been issued?

A. I did.

Q. Did you advise me that you would be willing to come wherever it would be necessary without any attachment being served or any arrest taking place?

A. I did.

Q. And did you stay in your hotel in Dallas all that day?

A. No; I left Dallas about six o'clock last night.

Q. And then you came here to Austin to appear this morning?

A. Yes, sir.

Q. Were you scheduled to be at Dallas at a meeting today?

A. I was.

[fol. 87] Q. Was that an organizing meeting?

A. No.

Q. What sort of meeting was that?

A. I am Secretary of a national committee set up by the C. I. O. for the purpose of getting more active political participation of our people.

Q. You mean of union people?

A. Of Union people, yes. Texas, Louisiana, and Oklahoma are set up as one region here for political action. This meeting was called in Dallas this morning by myself. Also, I sent out notices on that a couple of weeks ago for the purpose of discussing with key labor leaders of the C. I. O. ways and means of developing a more effective political action in these three states.

Q. And there was no organizing of any kind contemplated or scheduled for this meeting?

A. No.

Q. Did you contemplate when you came down to Texas that you would engage in any organizing activities of any kind other than at the Goose Creek or Pelly meeting?

A. No, sir; because I also had an airplane ticket bought to leave Dallas at nine thirty this evening to go to Washington, and I had priority from the War Department on that.

[fol. 88] Q. And did you at any time have any intention of doing any actual solicitation in Texas other than this one meeting?

A. I did not.

Q. Had you ever announced to anybody, publicly or otherwise, that you had any such intentions?

A. Never.

Q. And have you any present intention of engaging in any further solicitations in Texas so far as getting members is concerned?

A. Well, not on this particular trip.

Q. And your purpose so far as the meeting was concerned, after you had appeared here and found out that the issue of testing the law had been raised, was to provide a test case?

A. That is correct.

Q. In order to determine whether your opinion that freedom of speech was involved was correct or not?

A. That is right.

Q. I want to clarify one point, Mr. Thomas. I believe you have stated that you had checked the law before you had been served with the temporary restraining order, and that you believed it was unconstitutional and an infringement upon your freedom of speech?

A. That is correct.

[fol. 89] Q. After you read the injunction did you also consider that the restraining order against you in that in-

junction constituted an infringement on your freedom of speech?

A. Yes, sir. I am no lawyer, but I could not see how a restraining order could be constitutional when based upon a law which I considered unconstitutional.

Mr. Goodman: That is all.

Mr. Dickson: No questions.

(Witness excused.)

Mr. Goodman: With that we rest, except for argument.

Mr. Dickson: The State has no further evidence.

STIPULATION AS TO RECORD

The Court: Is it agreed by the parties that this is the record that would be submitted in the original hearing set for this morning—that this record may be considered for that purpose?

Mr. Goodman: The parties stipulate that the complete record, including the testimony and the exhibits, made in this cause, be also considered as the record in the hearing scheduled for this morning on the application of the plaintiff for a temporary injunction.

[fol. 90] Mr. Dickson: That is correct.

MOTION FOR JUDGMENT

Mr. Goodman: We would like at this point to urge our motion for judgment of "not guilty" and for a dissolution of the temporary restraining order on all of the grounds covered in our pleadings filed up to this date. The motion is in the nature of a request for an instructed verdict.

The Court: I will deny the motion at this time.

Mr. Goodman: Note our exception.

Testimony closed.

[fol. 91] PLAINTIFF'S EXHIBIT No. 1

Plaintiff's Exhibit No. 1 is Plaintiff's Original Petition, and is included in the Clerk's transcript.

[fol. 92] PLAINTIFF'S EXHIBIT No. 2

Plaintiff's Exhibit No. 2 is the Court's Fiat, and is included in the Clerk's transcript.

[fol. 93] PLAINTIFF'S EXHIBIT No. 3

Plaintiff's Exhibit No. 3 is the Citation and Return on the Plaintiff's Original Petition, and is included in the Clerk's transcript.

[fol. 94] PLAINTIFF'S EXHIBIT No. 4

Plaintiff's Exhibit No. 4 is the Notice on the Writ of Contempt together with the Sheriff's Return, and is included in the Clerk's transcript.

[fol. 95] PLAINTIFF'S EXHIBIT No. 5

Plaintiff's Exhibit No. 5 is the Verified Motion for Contempt which was filed in this Court on September 24th, and is included in the Clerk's transcript.

[fol. 96] PLAINTIFF'S EXHIBIT No. 6

Plaintiff's Exhibit No. 6 is the Order of Attachment issued by this Court on September 24, 1943, and is included in the Clerk's transcript.

[fol. 97] PLAINTIFF'S EXHIBIT No. 7

Application for Labor Organizer's Card

Date — — , — — .

To the Secretary of State
Austin, Texas.

Application is hereby made for a Labor Organizer's card pursuant to the provisions of House Bill No. 100, passed at the Regular Session of the 48th Legislature.

1. My name is _____
(Last name) (First name) (Middle name)
2. Address _____
(Street or Box No.) (City) (State)
3. My Labor Union affiliations are as follows: _____
(Specify definitely and fully)

4. As evidence of my authority to act as Labor Organizer for the labor union with which I am connected, I am furnishing the following credentials:

5. Copy of such credentials is attached hereto.

6. I am a citizen of the United States of America.

[fol. 98] 7. Have you ever been convicted of a felony in Texas or any other State?

(Yes) (No)

(a) If you have been convicted, state the nature of the offense and the State in which conviction was had.

(b) If you have been convicted, have your rights of citizenship been fully restored?

(Yes) or (No)

(c) By what authority?

The statements set out above are true and correct.

(Signature)

(Do not write in this space)

Action:

Date No.

Signature

Subscribed and sworn to before me this day of

, 19 , to certify which, witness my hand

[fol. 99] and seal of office.

(Notary Public in and for

County, Texas.)

(Seal)

[fol. 100]

PLAINTIFF'S EXHIBIT No. 8

IN THE DISTRICT COURT OF THE COUNTY OF TRAVIS, STATE OF
TEXAS, IN AND FOR THE 98TH JUDICIAL DISTRICT

No. 68729

CONGRESS OF INDUSTRIAL ORGANIZATIONS, an Unincorporated
Association; PHILIP MURRAY, Individually and as Presi-
dent of said Congress of Industrial Organizations; et al.,
Plaintiffs and Representatives of a Class,

vs.

SIDNEY LATHAM, as Secretary of State of the State of
Texas; GERALD C. MANN, as Attorney General of the
State of Texas; BENTON COOPWOOD, as District Attorney
of Travis County, Texas, and as representative of a
Class; WILLIAM YELDERMAN, as Acting County Attorney
for Travis County, Texas, and as representative of a-
class, Defendants.

COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT,
INTERLOCUTORY AND PERMANENT INJUNCTION

Plaintiffs complaining of the defendants, and for their
petition, respectfully show and allege:

[fol. 101] 1. The Parties

1. At all times herein mentioned the Congress of Indus-
trial Organizations was and now is a voluntary and unin-
corporated association composed of numerous voluntary
and unincorporated associations or labor unions, the said
affiliated associations having an aggregate membership of
several million persons in all states of the United States,
including the State of Texas, and in Canada, and all of said
members are classified according to their various trades
and industries into separate, voluntary and unincorporated
associations or labor unions. The Congress of Industrial
Organizations maintains its principal office in the City of
Washington, District of Columbia. The plaintiff, Philip
Murray, at all times herein mentioned was and now is a
member of a labor union affiliated with the said Congress
of Industrial Organizations and the duly elected, qualified
and acting President of the said Congress of Industrial
Organizations.

2. At all times herein mentioned, the Texas State Industrial Union Council was and now is a voluntary and unincorporated association composed of voluntary and unincorporated associations or labor unions located in the [fol. 102] State of Texas, the said affiliated labor unions having an aggregate membership of approximately 30,000 persons in the State of Texas. The plaintiff, I. R. Gray, at all times herein mentioned was and now is a member of a labor union affiliated with the said Texas State Industrial Union Council and duly elected, qualified and acting President of the said Texas State Industrial Union Council.

3. At all times herein mentioned the United Automobile, Aircraft and Agricultural Implement Workers of America was and now is a voluntary and unincorporated association of employees employed in automobile, aircraft and agricultural implements plants. It has a total membership of approximately 950,000 persons in the numerous states of the United States and in Canada, including many thousands of members in the State of Texas. It is affiliated with the plaintiff Congress of Industrial Organizations. Its members are organized into autonomous subdivisions known as local unions, a number of which consist in whole or in part of residents of the State of Texas. It maintains its principal office in the City of Detroit, State of Michigan. The plaintiff, R. J. Thomas, at all times herein mentioned was [fol. 103] and now is a member of the United Automobile, Aircraft and Agricultural Implement Workers of America and duly elected, qualified and acting President of the said United Automobile, Aircraft and Agricultural Implement Workers of America.

4. At all times herein mentioned, the Oil Workers International Union was and now is a voluntary and unincorporated association of employees employed in the oil industry. It has a total membership of approximately 60,000 persons in numerous states of the United States, including many thousands of members in the State of Texas. It is affiliated with the Congress of Industrial Organizations. Its members are organized into autonomous subdivisions known as local unions. A number of said local unions exist in the State of Texas and consist in whole or in part of residents of the State of Texas. It maintains its principal office in the City of Fort Worth, State of

Texas. The plaintiff, O. A. Knight, at all times herein mentioned was and now is a member of the Oil Workers International Union, and duly elected, qualified and acting President of the said Oil Workers International Union.

[fol. 104] 5. At all times herein mentioned, the United Steel Workers of America was and now is a voluntary and unincorporated association of employees employed in the steel industry. It has a total membership of approximately 800,000 in numerous States of the United States, including many thousands of members in the State of Texas. It is affiliated with the plaintiff, Congress of Industrial Organizations. Its members are organized into autonomous subdivisions known as local unions, a number of which consist in whole or in part of residents of the State of Texas. It maintains its principal office in the City of Washington, D. C. The plaintiff, David McDonald, at all times herein mentioned was and now is a member of the United Steel Workers of America and duly elected, qualified and active Secretary-Treasurer of the said United Steel Workers of America.

6. At all times herein mentioned, the Amalgamated Clothing Workers of America was and now is a voluntary and unincorporated association of employees employed in the clothing industry. It has a total membership of approximately 300,000 in numerous states of the United States, including many thousands of members in the [fol. 105] State of Texas. It is affiliated with the Plaintiff, Congress of Industrial Organizations. Its members are organized into autonomous subdivisions known as local unions, a number of which consist in whole or in part of residents of the State of Texas. It maintains its principal office in the City of New York, New York. The plaintiff, Sidney Hillman, at all times herein mentioned was and now is a member of the Amalgamated Clothing Workers of America and duly elected, qualified and active President of the said Amalgamated Clothing Workers of America.

7. At all times herein mentioned the National Maritime Union was and now is a voluntary and unincorporated association of employees employed in the maritime industry. It has a total membership of approximately 50,000 persons in numerous States of the United States, including several thousand members in the State of Texas. It is affiliated

with the plaintiff, Congress of Industrial Organizations. Its members are organized into autonomous subdivisions known as local unions. A number of said local unions exist in the State of Texas and consist in whole or in part of residents of the State of Texas. It maintains its principal office in the City of New York, State of New York. The [fol. 106] petitioner, Joseph Curran at all times herein mentioned was and now is a member of the National Maritime Union and duly elected, qualified and acting President and head of the said National Maritime Union.

8. At all times herein mentioned Local Union 227 of the Oil Workers International Union is a voluntary and unincorporated association which is a local or subdivision of plaintiff, Oil Workers International Union, and is composed of numerous persons, most of whom are residents of the State of Texas, and employees of the Texas Co. Refinery and the Gulf Refining Co. located in the vicinity of Port Arthur, Texas. The said local union has been duly and officially certified by the National Labor Relations Board as the duly designated collective bargaining representative within the meaning of Section 9 of the National Labor Relations Act of certain groups of employees employed by the said Texas Co. Refinery located in the vicinity of Port Arthur, Texas. The said Texas Co. Refinery and Gulf Refining Co. are engaged in interstate commerce and are subject to the jurisdiction of the National Labor Relations Board. The plaintiff J. C. Fikes at all times [fol. 107] herein mentioned was and now is a member of the said local union and is a duly elected, qualified and acting officer of the said union and is employed by * * *

9. At all times herein mentioned Local Union No. 367 of the Oil Workers International Union is a voluntary and unincorporated association which is a local or subdivision of plaintiff Oil Workers International Union and is composed of numerous persons, most of whom are residents of the State of Texas, and employees of employers located within the State of Texas. The said local union has been duly and officially certified by the National Labor Relations Board as the duly designated collective bargaining representative within the meaning of Section 9 of the National Labor Relations Act of certain groups of employees employed by employers in the State of Texas, including employers engaged in interstate commerce and subject to

the jurisdiction of the National Labor Relations Board. The plaintiff, J. J. Hickman at all times herein mentioned was and now is a member of the said local union and is a duly elected, qualified and acting officer of the said union, and is an employee of an employer in the State of Texas [fol. 108] engaged in interstate commerce, and subject to the jurisdiction of the National Labor Relations Board.

10. All plaintiff unincorporated associations are organizations and associations of employees including working men and women, in various trades, occupations and industries who have from time to time assembled and associated together and are assembling and associating together for the purpose of organizing themselves into voluntary and unincorporated associations and for the purpose of forming, joining and assisting their organizations so formed, including the petitioners herein named, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and otherwise dealing with their employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment, for their mutual aid and protection and for the purpose, by these and other means, of protecting themselves and improving their working conditions, wages and employment relationships. Plaintiff unincorporated associations are of the type commonly regarded and denominated as labor unions.

[fol. 109] 11. Said employees have associated and assembled and formed voluntary associations, named herein as plaintiffs, and other labor unions affiliated with the said plaintiffs for the following further purposes necessary to the effectuation of the foregoing purposes:

(a) Exchanging and discussing among and between themselves ideas and information related to the foregoing purposes and arriving at mutual and common decisions.

(b) Disseminating to the public, to fellow employees who have not joined in the association and to the public officials and representatives of government, both of the various States, including Texas, and of the United States, facts, information and opinions concerning the said association, its purposes and objectives and the problems of its members and of wage earners generally, the benefits of the Na-

tional Labor Relations Act, and other federal statutes and the rights granted thereby.

(c) To cement the interests of organized labor and of employees in individual trades and industries for their mutual protection, to establish fraternal relations among such employees, to insure harmonious cooperative action, to protect and promote the rights, privileges and immunities of the wage earners and the general welfare of labor organizations and employees represented by and affiliated with the plaintiffs and of labor generally, and to increase the dignity of labor and elevate it to a higher level of good citizenship.

12. The said employees have through their local and national unions associated and assembled and formed the Congress of Industrial Organizations with the objective and purpose of further effectuating all of the foregoing purposes and also to create and encourage a closer federation and cooperation through the organization of industrial union councils respectively, in cities and States; to establish national and international labor organizations based upon the autonomy of each trade or industry; to establish a national congress of all national and international labor organizations; to aid and assist each other; to aid and encourage public support for union members and union-made materials; to secure legislation in the interests of the working people and to influence public opinion by peaceful and legal methods in favor of organized labor and better working and health standards; and to aid and encourage the [fol. 111] labor press of America.

13. The said employees have through their local and national unions associated and assembled and formed the Texas State Industrial Union Council with the objective and purpose of further effectuating all of the foregoing objectives and purposes and also to devise means for the complete organization of labor in Texas; to promote good citizenship; to establish better communication between the labor unions of said State; to secure united and harmonious action in all matters affecting the welfare of organized workers; to circulate labor literature and promote economic intelligence; to create a public sentiment more favorable to labor unions; to prevent unfavorable legislation, and make known the opponents of the principles of organ-

ized labor; to collect statistics concerning labor so that organized labor may be better informed in preparing laws calculated to benefit the laboring people; to discourage and to prevent the growth of child labor; to prevent the practice of blacklisting; to unite the efforts of labor organizations for better and healthier working conditions; to give scope and power to all attempts to enforce fair conditions, and to endorse or protest wherever the interests of laboring people in Texas may be involved; to encourage [fol. 112] workers for wages to organize themselves for the protection of their rights and the advancement of their special vocations, and to promote the closest possible unity among labor people in matters of general concern. There are numerous separate unincorporated labor organizations in the State of Texas affiliated with the Texas State Industrial Union Council for the objective and purpose aforesaid, and the said Texas State Industrial Council is composed of delegates appointed by or represented by said various labor organizations in the State of Texas.

14. In the effectuation of the purpose aforementioned it is the necessary objective and practice of labor organizations and of the plaintiffs herein mentioned, and their affiliates to negotiate and bargain with persons employing members of such organizations with respect to wages, hours and working conditions of the members of said unions and pertaining to other matters affecting or threatening the economic standards and the mutual welfare of the members of said union, and to arrive at mutual agreements embodied in collective bargaining contracts with said employers. Some of the said collective bargaining agreements [fol. 113] of the plaintiff unincorporated associations now in force and effect provide in part that dues or other collections for the benefit of the said labor unions be deducted by the employer from the check or salary of the employee. Some of the plaintiff unincorporated associations have entered into and are now parties to such collective bargaining agreements with employers, the predominant part of whose business involves the transportation or shipment of goods, articles, material or commodities from and to the State of Texas to and from other states, and who are otherwise engaged in business affecting interstate commerce, and the members of such plaintiff unincorporated associations employed by such employers are likewise engaged in

such interstate commerce. Some of said collective bargaining agreements cover in a single national agreement, numerous employees and establishments of a single employer including establishments both in the State of Texas and in other states, and the administration and enforcement of said contracts depend upon the joint activity of the national plaintiff unincorporated association which is party to the agreement and its local union or unions into which [fol. 114] the employees of the said employer are organized.

15. In the course of such negotiation and bargaining issues have arisen between said union and the members thereof on the one side and the employers employing members of said unions on the other, pertaining to wages, hours and working conditions and relative to the right of representation and to collective bargaining and pertaining to other matters affecting or threatening the economic standards or the mutual welfare of the members of said unions, including the terms of employment and discharge of employees and including the matters and subjects of negotiations set forth in paragraph 14 above. In determination of and settlement of such issues and in the effectuation of the purposes and objectives of labor organizations hereinabove set forth it has been necessary on occasions for members of labor organizations, including members of the petitioners herein named, and of organizations affiliated with them, to make known to the public and to fellow employees the facts relating to the issues involved, to undertake lawful concerted action with said fellow employees, and by other lawful means to attempt to persuade, induce and cause said [fol. 115] employer to grant his employees certain requests, rights, privileges, and benefits concerning the subject matter of negotiation and the bargaining between such employer and said employees, all as hereinabove set forth.

16. For the effectuation of the foregoing purposes and the carrying on of the foregoing acts and activities of labor organizations and of the plaintiffs herein it has been and is necessary for the members assembled and associated into such organizations to engage offices, hire and retain employees, purchase and print newspapers, circulars, and other matters, maintain records, and to contribute to, establish and maintain funds and accounts and otherwise to raise money essential for the foregoing activities. For the said purposes members of the plaintiff unincorporated associa-

tions have found it necessary from time to time to volunteer for special duties in special situations, including assisting in membership and organization drives in which they solicit memberships in a labor union or members for a labor union and in such cases such members have frequently been reimbursed and given remuneration for the work they performed by the plaintiff unincorporated associations. Mem-[fol. 116] bers of plaintiff unincorporated associations who are aliens do and have volunteered for such work and have received and do receive such reimbursement and remuneration. For the effectuation of the said purposes all of the plaintiff unincorporated associations maintain and employ agents, officers, organizers, representatives and other persons operating in the State of Texas, some of whom for pecuniary or financial consideration solicit memberships in a labor union or members for a labor union, others of whom do not, except in isolated and infrequent cases, directly solicit memberships in or members for a labor union and others of whom do regularly engage in activities related to the enlisting and recruiting of memberships in or members for a labor union but do not themselves directly solicit membership in or members for a labor union. Some of the plaintiff unincorporated associations maintain and employ regional officers, agents, organizers and representatives who perform the foregoing functions and otherwise administer the affairs of their respective labor organizations in their region, including the State of Texas, although some of these regional representatives themselves are stationed outside the State of Texas.

{fol. 117} 17. For the foregoing purposes and activities the members of each labor union and each of the plaintiff labor unions have jointly agreed upon mutual contributions to be made by each member on such basis and such terms and conditions as the members of each organization have determined, including when, how, and by whom arrears in payment of such contributions shall be made. These mutually agreed upon contributions of the members, together with such additional income as may be derived from the investment of joint funds so created, constitute the sole source of income and the sole funds and moneys possessed by labor organizations and by the plaintiff unincorporated associations. The amount and manner of payment of these contributions have been and are from time to time fixed

for the purpose of carrying out all the foregoing purposes and activities and for the purpose of establishing reserves to meet emergency needs in amounts and at times and occasions which are not foreseeable or predictable or calculable with reasonable certainty. Such emergencies include periodical decreased membership, special organizational drives or unemployment. The funds so obtained are used for the purpose, among others, of protesting and [fol. 118] furthering the interests of the plaintiff unincorporated associations and their membership by opposing proposed legislation deemed detrimental to such interests, by advocating the adoption of favorable legislation, by opposing the candidacy for public office of candidates deemed antagonistic to such interest, by promoting and assisting the candidacy for public office of all persons deemed sympathetic to such interests. This involves and has involved upon occasion the making of financial contributions by some of the plaintiff unincorporated associations to political parties and to persons running for political office to defray the cost of the campaign expenses of such individuals. Labor organizations, including the plaintiffs in the present action, are accountable to and do account to members of such organizations for all funds received, possessed and handled by such organizations. The facts respecting the extent of and the distribution of the funds of a labor organization, including the plaintiffs herein, are not, except by common consent of the members in accordance with the rules governing the operation of the organization as adopted by the members, made known to employers of members of the said organizations. The disclosure [fol. 119] of such information to employers and to persons with interests adverse to those of the plaintiffs would be detrimental to the best interests of the members of said organizations and to the achievement of the purposes and objectives herein set forth.

18. In the exercise of their rights of association and free assembly and free speech and in the effectuation of the foregoing purposes through said free speech and free assembly, the members of labor organizations, including the plaintiffs herein mentioned and their affiliates, have reached joint agreement upon their mutual obligations and operations, the rules governing the time and manner of decisions respecting mutual and joint action, requests to be made

in negotiation and bargaining as hereinabove described, actions to be taken in pursuance of said requests and other objectives of the organization, the qualifications and manner and time and place and frequency of election of officers, the qualification of members to participate in all said decisions and elections, the manner of conducting, time and place and frequency of meeting. The members associated and assembled into said labor organizations, including all [fol. 120] plaintiffs herein, have determined the manner in which and the reasons for which any member shall be expelled, having in mind the necessity for expeditious action to maintain discipline in order to carry out their obligations under collective bargaining agreements and their commitments with a view to constituting themselves a responsible organization in their dealings with their employers, with the public, and among themselves. The members associated and assembled into said labor organizations, including all plaintiffs herein and their affiliates have entered into mutual agreement among themselves and with other persons associated and assembled into local unions in States other than Texas affiliated with the same national organizations as members of plaintiff unions in Texas, with respect to the mutual obligations of all of said local unions and the mutual obligations between said local unions and their members and their respective national unions, including obligations and agreement with respect to the time, place, frequency and manner of conducting election of officers both in local unions and in national organizations the time and manner of decisions respecting joint actions and requests to be made in negotiations and bargaining. [fol. 121] All of said mutual agreements, understandings and decisions as herein set forth have been made and adopted by the persons associated and assembled into the said labor organizations for the necessary operations of their organization and the effectuation of their objectives, purposes and rights. All of the plaintiff unincorporated associations appoint some of their representatives and elect others. Some plaintiff Unincorporated associations elect officers, agents, organizers, or representatives annually. Some plaintiff unincorporated associations elect officers, agents, organizers or representatives for a period longer than one year. Some plaintiff unincorporated associations elect officers, agent, organizers, or representatives for a period less than one year. Some plaintiff unincorporated

associations elect officers, agents, organizers or representatives who function jointly with other elected officers, agents, organizers or representatives as a committee or board of trustees or otherwise in the administration of matters, the technical nature of which necessitates continuity of membership on such committee or boards, making it unfeasible that all such officers be elected at the same time and [fol. 122] requiring that some shall hold office for periods in excess of one year. In certain cases only a part of the membership of some of the plaintiff unincorporated associations, e.g. the membership in a particular department or division of an employer, elect the officers, agents, organizers or representatives of said plaintiffs. All of the plaintiff unincorporated associations have among their members aliens who under the constitution and by-laws of said plaintiff associations are eligible to become officers or officials thereof and in some cases have been and are officers or officials thereof and have been and are engaged in soliciting memberships in a labor union or members for a labor union for pecuniary or financial consideration. A requirement that local unions and members in the State of Texas comply with rules different from and at variance with those adopted by mutual agreement among all the persons associated and assembled into the national and local organizations herein mentioned would interfere with, injure and destroy the effective operation of the said local unions and national unions and prevent the exercise of the rights and achievement of the purpose and objectives herein set forth, [fol. 123] and interfere with and prevent effective collective bargaining with employers in Texas, with employers in other States competing with employers in Texas and with those employers who operate plants both in the State of Texas and other States.

19. The foregoing activities as carried on by labor organizations and their members and by the plaintiffs in the present action and other persons represented by these plaintiffs constitute the only effective means possessed by organized labor to inform the public and otherwise deal with practices of employers which are destructive of public policy and of the interests of wage earners generally and of members of labor organizations and of the plaintiffs herein, and said activities are concomitants of the right of employees to organize into labor organizations and to

bargain collectively with employers and otherwise to advance their mutual interests and welfare.

20. The members of the plaintiff unincorporated associations and the officers, agents and employees of the said associations and the members of all other organizations of employees having members who are residents of the [fol. 124] State of Texas and organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment and the officers, agents and employees of such organizations constitute a class situated similarly to the petitioners herein with respect to the matters herein alleged and are so numerous as to make it impractical or impossible to bring them all before this Court, but the rights and interests of all persons with respect to the things and matters in this complaint alleged are fairly represented by the petitioners herein and these petitioners have heretofore been authorized to represent said persons with respect to the matters in this complaint alleged and bring this suit for and on behalf of themselves and all other organizations and persons similarly situated.

21. The defendant Sidney Latham is the duly elected and acting Secretary of State of the State of Texas.

22. The defendant Gerald C. Mann is the duly elected and acting Attorney General of the State of Texas.

[fol. 125] 23. The defendant, Benton Coopwood is the duly elected and acting District Attorney of the County of Travis, State of Texas.

24. The defendant William Yelderman is the duly constituted acting County Attorney for the County of Travis, State of Texas.

25. The defendant, Gerald C. Mann, Attorney General of the State of Texas, has been made a defendant because he is charged with the enforcement of the Act known as House Bill No. 100. All the District Attorneys and County Attorneys for the State of Texas within their respective jurisdictions, are likewise charged with the enforcement of said Act. But it is impractical to bring them all before the Court, and plaintiffs aver that the presence before the Court of the Secretary of State, the Attorney General,

Beuton Coopwood, District Attorney and William Yelder-
man, County Attorney, will fairly insure the adequate
representation of all officials charged with the enforcement
of said act.

II. *The Statute and the Relief Sought*

1. The Legislature of the State of Texas has passed, and
[fol. 126] the Governor of said State on or about April 12,
1943, duly approved, a statute known as House Bill No. 100
and entitled:

AN ACT

regulating labor unions; declaring a public policy; de-
fining words and terms; requiring certain reports by
labor unions to the Secretary of State; fixing the time
therefor; providing a limited privilege character for
such reports; regulating the manner and time of the elec-
tion of officers, agents, organizers and representatives
of labor unions, stating a proviso; making it unlawful
for an alien, or any one convicted of a felony to serve as
an officer, official or organizer of a labor union, excepting
a convicted felon whose citizenship has been restored;
making it unlawful for any labor union to make a financial
contribution to any political party or person running for
political office; regulating the duties and activities of or-
ganizers for labor unions; prescribing certain duties of
the Secretary of State; requiring labor unions to file
with the Secretary of State copies of certain working
[fol. 127] agreements; providing a qualified privilege
for such agreements; regulating fees, dues, fines, assess-
ments and pecuniary exactions by labor unions; regu-
lating the collection and disposition of fees, dues and
moneys whatsoever, collected by organizers, officers,
members or agents of labor unions, in respect to mem-
bership in unions, or for the privilege or permit to work;
requiring labor unions to keep certain books of accounts,
open to certain inspection; regulating rights of mem-
bers, any persons desiring membership in labor unions;
dealing with expulsion and reinstatement of members;
declaring rules of construction; containing a saving
clause with respect to constitutional invalidity; and de-
claring an emergency.

2. The operation and enforcement of the said alleged
statute threatens the invasion and destruction of rights,

privileges and immunities guaranteed and secured to the plaintiffs by the Constitution and laws of the United States and of the State of Texas, as herein set forth, and will invade and destroy the personal and property rights of the plaintiffs resulting in a multiplicity of suits and work [fol. 128] irreparable injury on plaintiffs and all those in their class.

3. The defendants and each of them contend that the operations and actions of said labor unions and the members thereof, and the plaintiffs, are unlawful and criminal, unless said unions and the members and plaintiffs comply with the provisions and requirements of said statute which plaintiffs claim violates their constitutional rights and privileges.

4. It is the intent and purpose of the defendants, acting under the statutory authority illegally granted them by said statute, to force the labor unions having members in the State of Texas, and plaintiffs to comply with said illegal statute.

5. The defendants threaten to and will, unless enjoined by this court, file criminal complaints and other legal proceedings against, and will prosecute each and all of the union officers, agents and members thereof, including these plaintiffs, and any other person or persons doing any of the acts specifically forbidden by and held to be a violation of said alleged law, and will, unless restrained by this court, cause them to be arrested and will prosecute them for the [fol. 129] alleged violation of said alleged law. Plaintiffs will further be subjected to a multiplicity of civil suits for damages and other relief for alleged violations of the said alleged law unless the said alleged law is declared null and void and unconstitutional.

6. The acts of defendants under color of the alleged statute will work an irreparable injury to labor unions and their members and these plaintiffs, and result in interminable litigation, unless these plaintiffs have relief in equity. Enforcement of the terms and provisions of the said alleged statute will deprive the plaintiffs of the services, aid and assistance of members and employees of the plaintiff unincorporated associations, and will deprive the plaintiffs of the benefits and privileges of mutual association and as-

sembly and of the mutual obligations heretofore assumed by members of the plaintiff organizations in such mutual association and assembly. It would deprive the plaintiffs and all the members of the plaintiff unincorporated associations of the benefits, rights, privileges and immunities heretofore received and now possessed under contracts made by and with plaintiff unincorporated associations and [fol. 130] by and among the members thereof, and will prevent the plaintiffs and all members of the plaintiff unincorporated associations from engaging in all of the activities hereinbefore set forth and from securing the benefits, objectives and purposes of their mutual association and assembly as hereinabove set forth, and will irreparably injure and destroy the plaintiff unincorporated associations. The acts of defendants as threatened and intended aforesaid will interfere with and prevent and cause a cessation and denial of collective bargaining relations between the plaintiff unincorporated associations and employers and interfere with and prevent the renewal and continuance of contracts and agreements now in effect between the said plaintiffs and employers and others, including contracts which by their terms provide for automatic renewal. The filing of criminal complaints against or the prosecuting of one or more of plaintiffs or one or more members or officers of plaintiff unincorporated associations, or the filing of civil suits against one or more of the petitioning unincorporated associations will, during the pendency of such prosecution or suit, work all of the said irreparable injury to all of the [fol. 131] said petitioners and all of the members of the plaintiff unincorporated associations and all of the members of labor unions in the State of Texas. The acts of defendants as threatened and intended aforesaid will interfere with and prevent and cause a cessation and denial of collective bargaining relations between the plaintiff unincorporated associations and employers and interfere with and prevent the renewal and continuance of contracts and agreements now in effect between the said plaintiffs and employers and others, including contracts which by their terms provide for automatic renewal. The filing of criminal complaints against or the prosecuting of one or more of plaintiffs or one or more members or officers of plaintiff unincorporated associations, or the filing of civil suits against one or more of the petitioning associations, will, during the pendency of such prosecution or suit, work all of the said

irreparable injury to all of the said plaintiffs and all of the members of the plaintiff unincorporated associations and all of the members of labor unions in the State of Texas. The acts of defendants as threatened and intended aforesaid will further result in a multiplicity of prosecutions against the plaintiffs and each of them and the members [fol. 132] and officers thereof, and in a multiplicity of suits against the plaintiff unincorporated associations.

7. The defendants threaten to and will enforce the provisions of said unconstitutional statute, and the plaintiffs believe that they will do so unless restrained by an injunction order of this court; that by reason of the matters hereinbefore alleged, there exists a controversy between these plaintiffs and the class they represent, and the above named defendants and the class they represent, and plaintiffs have no plain, speedy or adequate remedy at law; that the Attorney General of Texas has heretofore rendered a written opinion to the Secretary of the State of Texas to the effect that several parts of said statute are unconstitutional; that said opinion has increased the uncertainty as to the rights, status and other legal relations of plaintiffs, their affiliates and members under said statute; that by reason of the above and foregoing, it is necessary for the protection of the rights of these plaintiffs, and the labor organizations represented by them, and the members thereof, that they secure a declaratory judgment as to the constitutionality and [fol. 133] validity of said alleged statute, and the various provisions thereof, and pending a determination of this action that plaintiffs be granted a temporary injunction against the defendants, and that thereafter the defendants be permanently enjoined from enforcing the provisions of said illegal statute.

III. CONSTITUTIONAL PROVISIONS INVOLVED

The provisions of the Constitution of the United States, the protection of which is now sought by the plaintiffs are:

Article I, Section 8, providing that Congress shall regulate commerce among the several states; and

Article I, Section 10, providing that no state shall make laws impairing the obligation of contract.

Article VI providing the Constitution and laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and

Amendment 1 providing freedom of speech shall not be abridged and the people shall have the right to peacefully assemble and to petition the government for a redress of grievances, secured against state abridgement by Section 1 of the 14th Amendment; and

[fol. 134] Amendment 9 providing the enumeration in the Constitution of certain rights shall not be construed to deny others retained by the people, secured against abridgement by Section 1 of the 14th Amendment; and

Amendment 14, Section 1, providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

The provisions of the Constitution of the State of Texas, the protection of which is now sought by the plaintiffs, are:

Article 1, Section 8, guaranteeing that every person shall be free to speak, write, or publish opinions, but be responsible for abuses of that liberty.

Article 1, Section 10, providing that in any criminal prosecution the accused shall have the right to demand the nature and cause of the accusations against him.

Article 1, Section 16, providing that no bill of attainder, ex post facto law, retroactive law or any law impairing the [fol. 135] obligations of contract shall be made.

Article 1, Section 17, providing that no irrevocable or uncontrollable grant of special privileges or immunities shall be made.

Article 1, Section 19, providing that no citizen of a State shall be deprived of life, liberty, property, or immunities without due process of law.

Article 1, Section 27, providing that the citizens of a State shall have the right, in a peaceable manner, to assemble together for their common good.

Article 1, Section 29, guarding against transgressions of the Bill of Rights contained in Article 1 of the Constitution of the State of Texas, and providing that said rights shall forever remain inviolate, and that all laws contrary thereto shall be void.

Article III, Section 56, providing that the legislature shall not, except as otherwise provided in the Constitution, pass any local or general law regulating labor.

Article III, Section 57, providing for certain notice, and publication in the passage of all local and special laws.

[fol. 136] *IV. Specific Provisions of the Statute Violating the Constitution*

Said purported statute hereinbefore referred to is void, unenforceable, unconstitutional and of no legal effect whatsoever, for the following reasons, to-wit:

1. Said alleged statute purports to regulate the relations of employees and employers engaged in interstate commerce, producing goods for interstate commerce, and engaged in occupations affecting interstate commerce, and purports to regulate the activities of labor organizations, national in character, whose activities in the State of Texas are incidental to their national activities, and purports to regulate local subdivisions of such labor organizations, the power to regulate interstate commerce being within the exclusive province of the United States Government within the meaning of Article 1, Section 8, of the Constitution of the United States.

2. Said alleged statute, particularly by Sections 4, 6, 7 and 10, violates Article 1, Section 10, and Section 1 of the 14th Amendment to the Constitution of the United States, and Article 1, Sections 16 and 29 of the Constitution of the State of Texas, in that said alleged statute purports to impair, interfere with and modify the obligations and [fol. 137] agreements mutually assumed by and among members, local subdivisions, officers and agents of labor organizations and by and between said organizations and employees and others, and to have retroactive effect with respect thereto. It impairs and interferes with the rights, privileges and immunities of said labor organizations and the members thereof to enter into and conclude agreements by and among themselves, by, with and through their mutual associations and with employers and others.

3. Said alleged statute violates Article VI of the Constitution of the United States in that said alleged act is in conflict with the provisions of the National Labor Relations Act, Title 29, Sections 151 to 166, U. S. Code Ann., and in that said act is in conflict with and violates the public policy and law of the United States with respect to em-

ployees engaged in interstate commerce, or engaged in occupations affecting interstate commerce, as laid down in Section 151 of said Code, and it is further in conflict with and violates and seeks to abrogate the rights and privileges conferred on all of such workers by Sections 157 and 158 of said Code aforesaid.

[fol. 138] 4. Said alleged statute deprives labor unions and the members of labor unions and the plaintiffs herein and the members of plaintiff unincorporated associations of liberty and property without due process of law, and specifically of the fundamental right of free speech and freedom of the press and the right to peacefully assemble and to petition for redress of grievances guaranteed to them by Article I, Sections 8, 19, 27 and 29 of the Constitution of the State of Texas and the First Amendment to the Constitution of the United States, which is secured against abridgement by the states by the Fourteenth Amendment to the Constitution of the United States in the following particulars, to-wit:

(a) Said alleged statute by various sections, and among others by the terms of Sections 3, 4, 4a, 4b, 5, 6, 7, 8, 8a, and 10a thereof, forbids persons and groups of persons to assemble together and freely discuss their desires as to joining a labor union, and forbids persons or groups of persons from attempting to persuade others to join a labor organization or from giving publicity to the advantages and benefits of joining a labor organization, to use peaceful persuasion and lawful publicity to enlarge the membership [fol. 139] of a labor union and to make known the provisions of the National Labor Relations Act and the bargaining rights of labor unions under said act, and otherwise to exercise the inherent and fundamental right to speak freely and to state the true and actual facts relating to labor unions, or in any industrial controversy or otherwise to engage in the activities or ~~to attempt~~ to achieve the objectives and purposes of labor organizations as hereinabove set forth unless the said person or persons or the groups so assembling adopt certain rules and regulations governing its operations and decisions, activities and elections, and file certain designated documents with the officers of the state as a prerequisite, to the exercise of said constitutional rights.

(b) Said alleged statute by its various sections is an arbitrary and unreasonable interference with and prohibition upon labor unions and their members and the plaintiffs herein and the members of plaintiff unincorporated associations in their constitutional right to conduct their own lawful internal and mutually agreeable affairs, and in their constitutional right to engage in the activities of labor organizations and the members thereof as hereinbefore set [fol. 140] forth, including the making of financial contributions to political parties or to persons running for political office, for the objectives and purposes hereinabove described.

5. By virtue of the foregoing the statute deprives labor unions and their members of liberty and property without due process of law, and abridges their privileges and immunities and denies them the equal protection of the law contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, and to Article I, Section 17 of the Constitution of the State of Texas; and, further, by virtue of the fact that said statute denies to labor unions and the members thereof privileges and immunities and equal protection of the laws allowed all other classes of citizens of the State of Texas, said statute is applicable solely to labor unions and all other voluntary associations are exempt, and arbitrarily applies to labor unions limitations, restrictions, injury and interference not applied to any corporation or group other than labor unions, in violation of Article III, Sections 56 and 57 of the Constitution of the State of Texas. The provisions of said statute are [fol. 141] an arbitrary selection of labor unions and members, based on an arbitrary distinction without any foundation.

The alleged statute by providing in Section 4 that the requirement for annual elections or the methods of holding same shall not apply to any labor union that for four years prior to the effective date of the law shall have held its elections for officers, delegates and like representatives less frequently than annually but which have held such elections either every three or every four years under their constitution, by-laws or other organization rules, provided further that such unions have during the last ten years charged not more than \$10 initiation fee to members, works

an arbitrary, unreasonable, fictitious classification and one with any substantial basis in law.

Sections 4, 4a, 4b, 7, 8, 8a, 9, 10 and 10a of said statute are further unconstitutional because they are an attempt to regulate by law the internal affairs of a labor organization to impose upon the members of such organization certain requirements, duties and obligations, deny to them the right to retain their present rights, privileges and benefits of membership in an unincorporated association, deprive [fol. 142] them of their personal and property rights as individuals and as a group, and constitute an arbitrary interference with labor unions and their members in their constitutional right to conduct their own lawful internal affairs, and said sections applying only to labor unions are not a reasonable, natural or just classification, but constitute an artificial or arbitrary distinction having no basis in law.

6. The said statute is in conflict with and violates the due process of law clause of the Fourteenth Amendment to the Constitution of the United States, and of Article I, Sections 10, 19 and 29 of the Constitution of the State of Texas, in that the said bill in its various provisions is so vague and indefinite and uncertain as to meaning that the things and matters therein sought to be prohibited are not capable of reasonable ascertainment in that, among others:

a) The term "labor organizer" as defined in Section 2(c) is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

b) The term "every labor union" as used in Section 3 [fol. 143] and Subdivisions (d) and (e) of said Section are so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

c) The whole of Section 4 is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

d) The whole of Section 4(a) is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

e) The whole of section 4(b) is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

f) The term "labor union organizer", the phrase "operating in the State of Texas", the term "soliciting any members" and the phrase "describing his credentials" as used in Section 5 are so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

g) The term "all labor unions" as used in Section 6 is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

[fol. 144] h) The whole of Section 7, and particularly the clause "which will create a fund in excess of the reasonable requirements of such union", and the clause "if such fees, dues, fines, assessments, or other pecuniary exactions create, or will create, an undue hardship on the applicant for initiation into the union, or upon the union members", and the clause "provided that the members contributing share or can reasonably expect to share in the benefits for which they are assessed", and the clause "provided such funds shall remain under control of the labor union members", and the term "any labor union", and the term "to prevent excessive initiation fees", as used in said Section 7 are so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

i) The whole of Section 8 is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

j) The whole of Section 8(a) is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

k) The whole of Section 9, and particularly the term [fol. 145] "any and all labor unions in the State" and the term "all receipts from whatever source and expenditures for whatever purpose", as used in said Section are so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

l) The whole of Section 10 and particularly the term "any labor union", and the term "for good cause", as used in said Section are so vague and indefinite as to be not susceptible of reasonable ascertainment and application.

m) The whole of Section 10(a) and particularly the term "unable to pay", as used in said Section are so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

n) The term "any labor union", and the term "each such violation", and the term "any officer of a labor union", and the term "any labor organizer" as used in Section 11 are so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

7. The said Act, being a penal statute, is subject to strict construction and the invalid and unconstitutional sections [fol. 146] and parts of the said Act, and the valid sections or parts, if any, are so interwoven and connected one with the other, and so dependent one upon the other, that it is apparent the Legislature would not have enacted and passed the valid sections or parts, if any, without enacting or passing the invalid sections and parts. Therefore the invalid sections and parts defeat and destroy the intention of the Legislature in the enactment of said Act, and the valid sections and parts, if any, must fall with the invalid sections and parts.

Wherefore, plaintiffs respectfully pray for judgment pursuant to the Uniform Declaratory Judgment Act, declaring the rights, status and other legal relations of the plaintiffs, their members and the members of other labor organizations in the State of Texas and declaring the sections and subsections of the Act known as House Bill 100, hereinbefore enumerated, void and unconstitutional and in violation of the Federal and State Constitutions, as hereinbefore specifically and specially asserted, and that the said Act is void and unconstitutional in its entirety, and that the Court, pursuant to Title 76 of the Revised Civil Statutes in the State of Texas order the issuance of a writ [fol. 147] of injunction permanently enjoining the respondents, their officers and employees and all persons acting under their authority and direction, including all the District Attorneys and County Attorneys of the State of Texas from enforcing or attempting to enforce the statute known as H. B. 100 or any of the provisions thereof, or from otherwise acting thereunder, and that pending such final declaration of rights and the issuance of a writ of permanent injunction, the Court make an interlocutory order

enjoining the respondents, their officers, employees, and all persons acting under their authority and direction, including all the District Attorneys and County Attorneys of the State of Texas from enforcing or attempting to enforce the statute known as H. B. 100, or any of the provisions thereof, or from otherwise acting thereunder, and for such other further relief as to this Court may seem just and proper in the premises.

Lee Pressman, Eugene Cotton, Attorneys for Congress of Industrial Organizations and Texas State Industrial Union Council. Maurice Sugar, Attorney [fol. 148] for United Automobile, Aircraft and Agricultural Implement Workers of America. William L. Standard, Mandel & Wright, Attorneys for National Maritime Union of America. Lee Pressman, Attorney for United Steel Workers of America; Oil Workers International Union and affiliated unions. John J. Abt, Attorney for Amalgamated Clothing Workers of America.

Herman Wright, upon his oath states that he is one of the attorneys for the plaintiffs in the foregoing complaint and petition and is authorized to make this affidavit; that he has read the allegations of said complaint and petition and that said allegations are true.

(S) Herman Wright.

[fol. 149] Sworn to and subscribed by Herman Wright before me, at Houston, Texas, this the 14th day of July, 1943.

(S) Estelle Roberts, Notary Public in and for Harris County, Texas. (Seal.)

[fol. 150] DEFENDANT'S EXHIBIT No. 1

Policies of State Department Administration of House Bill 100, 48th Legislature (Labor Bill)

The following interpretations and policies will be adhered to by the State Department in the administration of House Bill 100, of the 48th Legislature, pending a construction of the Act by the Courts:

1. Upon the presumption that the law is valid until declared invalid, all provisions of the Act, with the excep-

tion of Sections 4, 7 and 10a, will be deemed to be valid according to the Attorney General's Opinion No. 0-5196, approved April 12, 1943, and will be administered irrespective of pending litigation, unless and until a restraining order is issued or the Act is invalidated by a court of competent jurisdiction.

2. The effective date of the Act is August 10, 1943.

3. The Act is not deemed to affect any financial transactions of a labor union occurring prior to August 10, 1943, and the first financial report of any union will be required to cover only the period of time from August 10, 1943 to [fol. 151] the close of the year for which the first report was filed.

4. Within the meaning and scope of the definition of a "labor union" as defined in Section 2(b), it is considered that the organizations therein enumerated specifically, though not exclusively, include the following:

(1) Every local union operating within the State of Texas, irrespective of the State of domicile of its International or parent organization.

(2) Every local lodge of the Railway Brotherhoods.

(3) Every International, Grand Lodge or other parent organization that might be located and have its headquarters within the State of Texas.

5. The first report of a union operating upon a calendar year basis will be due on or before February 1, 1944, and should cover the period of time from August 10, 1943 through December 31, 1943.

6. If a union operating upon a fiscal year basis desires to change its filing date, as authorized by Section 3 of the [fol. 152] Act, the Secretary of State will grant such request and fix the filing date at any time not more than one calendar month after the close of the fiscal year.

7. The only unions that will be liable to make a financial report prior to February 1, 1944 will be such unions, if any, as close their fiscal year after August 10, 1943 and before December 31, 1943, and which desire to change their filing date to a date within one calendar month after the close of their fiscal year. In such event, the union will be liable.

for a report to be filed not later than the new filing date fixed, and covering the period of time from August 10, 1943 to the close of the fiscal year. If no change of filing date is requested, and the statutory filing date of February 1st is adhered to, the first report will be due February 1st, 1944, and should cover the period of time from August 10, 1943 through December 31, 1943, irrespective of the date the fiscal year was closed.

8. If a union has closed its fiscal year prior to August 10, 1943, and adheres to the statutory filing date of February 1st, its first report will be due February 1, 1944 and [fol. 153] should cover the period from August 10, 1943 through December 31, 1943. If such a union desires to change its filing date to a date within one calendar month after the close of its fiscal year, then its first report will be due one calendar month after the close of its fiscal year in 1944, and should cover the period of time from August 10, 1943 to the close of its fiscal year in 1944.

9. Any person who solicits memberships for a union and receives remuneration therefor, will be considered a "labor organizer" as that term is defined in Section 2(c) of the Act. Solicitation of memberships as an incident to other duties for which a salary is paid will be considered solicitation for remuneration. Accordingly, a so called "business agent," secretary or other employee of a union, who is authorized, but not required, to solicit memberships as an incident to his other duties, will be considered a "labor organizer" if he continues to solicit memberships after August 10, 1943. Such an employee will be relieved from the necessity of obtaining an "organizer's card" if he wholly abstains from the solicitation of any memberships after such date.

[fol. 154] 10. The so called "I. R." representatives, or insurance representatives, of the Railroad Brotherhoods will not be deemed to be "labor organizers" nor required to obtain an "organizer's card" for the purpose of carrying on their insurance work, unless they solicit for pay the membership of a non-member who has not made known his intention of becoming a member.

11. The provision of Section 3 of the Act making the reports available only to the Secretary of State, the Commissioner of Labor Statistics, the Attorney General, Grand

Juries and judicial and quasi-judicial inquiries, will be strictly construed and deemed to exclude District and County Attorneys, unless obtained by them through authorized instrumentalities mentioned above, and to exclude individual members of the reporting union.

12. In the absence of mistake, fraud or misrepresentation with respect to securing same, it is considered that the Secretary of State has no discretion in the granting of an "organizer's card," and that the applicant will be entitled to same upon compliance with the Act. It will be required, however, that the applicant show a bona fide [fol. 155] affiliation with an existing labor union.

13. If a union contract contains a so called "check off" clause, by reason of which a copy of such contract is required to be filed under Section 6 of the Act, the filing of such copy by the signatory organization will be sufficient and relieve the local unions receiving the benefits of such a contract from the necessity of each filing a copy, provided the signatory union attaches a list of all local unions in the State for whose benefit such contract is made.

Sidney Latham, Secretary of State, Austin 11, Texas.

SL/pj.

[fol. 156] DEFENDANT'S EXHIBIT No. 2

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 98TH
JUDICIAL DISTRICT

No. 68,729

CONGRESS OF INDUSTRIAL ORGANIZATIONS, et al.

VS.

SIDNEY LATHAM, Secretary of State, et al.

ANSWER

To the Honorable Judge of Said Court:

Now come the defendants, Gerald C. Mann, Attorney General of Texas, and Sidney Latham, Secretary of State of the State of Texas, and answering herein in response to citations

duly served upon them in their official capacities, respectfully say:

I

These defendants say that this is a suit brought against the State of Texas without its consent and for this reason the court has no jurisdiction. These defendants are each sued in their official capacities as officers and agents of the State concerning things which they have not done and may never do. The suit is an attempt by plaintiffs to obtain at [fol. 157] their own instance an advisory decree on the validity and constitutionality of a State statute, that will bind the State of Texas, its officers and agents in all subsequent suits and prosecutions. The Uniform Declaratory Judgments Act (Art. 2524-1, Vernon's Annotated Civil Statutes) does not authorize a suit against the State and the Legislature has never given its consent for the State to be sued in this manner.

Wherefore, these defendants pray that this suit be dismissed and that they recover their costs.

II

These defendants say that the court should refuse to render or enter a declaratory judgment or decree in this case and dismiss the suit for the reasons:

First, that in so far as the plaintiffs seek to enjoin the enforcement of H.B. No. 100, a criminal and penal statute, the court should withhold the use of its equity powers because (a) "Courts of equity do not ordinarily restrain criminal prosecutions" and (b) the plaintiffs have a full, adequate and complete defense at law, if said statute is void and unconstitutional as alleged in said petition.

[fol. 158] Second, a decision in this suit, a civil case, would not terminate the uncertainty or controversy giving rise to the proceeding because the Court of Criminal Appeals has under Section 5 of Article V of the Texas Constitution final jurisdiction "in all criminal cases of whatever grade" and in subsequent prosecutions under the criminal provisions of H. B. 100 the judgment of this court and the Supreme Court in this case would not be binding as the construction or validity of said Act.

Wherefore, these defendants pray that this suit be dismissed and that they recover their costs.

III

Without waiving the foregoing and for further answer, these defendants except to all those portions of plaintiffs' said petition wherein plaintiffs seek injunctive relief against those defendants prohibiting and enjoining them from the enforcement of the criminal provisions of said House Bill No. 100, and from filing suits thereunder in behalf of the State to recover penalties.* These defendants say that the plaintiffs are attempting by this suit to have determined in advance the guilt or innocence of themselves, their officers, and agents under hypothetical and supposi- [fol. 159] tious fact situations that may or may not arise and that this Honorable Court has no jurisdiction to grant such relief under the declaratory judgments statute or under any other statute of this State.

These defendants further say that this court must presume that defendants, as officers of the State, will perform their duties under the law in a proper and lawful manner and that they will not undertake to enforce House Bill No. 100 in such a way as to offend or violate any of the prohibitions or limitations contained in the State or Federal Constitutions or in the Wagner Labor Act, the Railroad Labor Act, or any other statutes which have been passed by the National Congress so as to render it invalid or unconstitutional by reason thereof.

These defendants would further show that this Court has no jurisdiction to grant an injunction in this case for the reason that the Declaratory Judgments Statute, under which this suit is brought, authorizes the court to announce or declare its judgment but not to enforce it through the issuance of injunctions, executions or other auxiliary writs. [fol. 160] Wherefore, these defendants pray that all of those provisions of plaintiffs' petition, wherein they seek injunctive relief against these defendants, enjoining them from instituting and prosecuting criminal cases and/or civil suits for penalties under the provisions of House Bill No. 100 be stricken from their said petition, and that the prayer of said plaintiffs for injunctive relief be dismissed.

IV

Without waiving the foregoing and for further answer herein, these defendants deny each and every allegation in plaintiffs' said petition and demand strict proof thereof.

Wherefore, defendants pray that plaintiffs take nothing by their suit and that these defendants go hence with their costs without day.

V

Without waiving the foregoing and for further answer herein, these defendants say that the Defendant Mann did on April 12, 1943, in his capacity as Attorney General of Texas, render an official opinion to Defendant Latham as [fol. 161] Secretary of State of the State of Texas, upon the constitutionality of said House Bill No. 100. Said opinion was rendered at the request of Defendant Latham pursuant to the authority and duty imposed upon the Attorney General by Article 4399, Vernon's Annotated Civil Statutes, and said opinion is of record in the Attorney General's Office as Opinion No. 0-5196, and is subject to public inspection. In said official opinion the Attorney General held that all provisions of said House Bill No. 100 were valid and constitutional, except Sections 4, 7 and 10a thereof. These latter sections were, in the opinion of the Attorney General, rendered invalid and unenforceable by reason of defects inherent in each of such provisions and not because of lack of power on the part of the Legislature to regulate and supervise labor unions and their members in the manner attempted. A copy of said opinion is attached hereto and made a part of this answer as fully as though copied herein, and the statements therein are hereby adopted as the position of these defendants with reference to the plaintiffs' allegations of invalidity and unconstitutionality of said House Bill No. 100.

[fol. 162] Wherefore, defendants pray that this Honorable Court enter its judgment herein upholding and construing said House Bill No. 100 in accordance with the opinion heretofore rendered by the Attorney General of Texas, and that these defendants recover their costs and they pray for such other relief, general and special, to which they may be entitled in law or in equity.

Gerald C. Mann, Attorney General of Texas.
(Signed) Fagan Dickson, Assistant Attorney General,
Attorneys for the Attorney General of Texas
and the Secretary of State of the State of Texas.

[fol. 163] DEFENDANT'S EXHIBIT No. 3

Defendant's Exhibit No. 3 is an Answer, and is included in the Clerk's transcript.

[fol. 164] DEFENDANT'S EXHIBIT No. 4

Defendant's Exhibit No. 4 is a Motion, and is included in the Clerk's transcript.

[fol. 165] DEFENDANT'S EXHIBIT No. 5

Defendant's Exhibit No. 5 is a Pleading, and is included in the Clerk's transcript.

CONSTITUTION

80

of the

INTERNATIONAL UNION

United Automobile, Aircraft

and

Agricultural Implement Workers

of America,

(UAW-CIO)

and

LAWS GOVERNING LOCAL
UNIONS



Adopted at
Chicago, Ill.

August, 1942

(First Edition, August, 1942)

CONSTITUTION
of the
INTERNATIONAL UNION
*United Automobile, Aircraft
and
Agricultural Implement Workers
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PREAMBLE

83

We hold these truths to be self-evident, expressive of the ideals and hopes of the workers who come under the jurisdiction of this International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO); that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these Rights, Governments are instituted among men, deriving their just powers from the consent of the governed. Within the orderly processes of such Government lies the hope of the worker.

We hold that the exigencies of the times, the complete subdivision of Labor in the development and operation of the industrial mass production system imposes conditions under which the worker is gradually but surely absorbed and controlled by the machine.

We hold these conditions to be utterly at variance with the spirit of justice and the needs of mankind. We believe the right of the workers to organize for mutual protection is the culminating growth of a great industry, which is evidence not only of its increased power but also of an economic and social change in our civilization.

We believe that Organized Labor and Organized Management possess the ability and owe the duty to society of maintaining, through co-operative effort, a mutually satisfactory and beneficial employer-employee relationship based upon understanding through the medium of conference.

The worker does not seek to usurp management's function or ask for a place on the Board of Directors of concerns where organized. The worker through his Union merely asks for his rights. Management invests thousands of dollars in the business. The worker's investment in the

business is his sinew, his blood and his life. The organized worker seeks a place at the conference table, together with management, when decisions are made which affect the amount of food he, his wife and family shall consume; the extent of education his children may have; the kind and amount of clothing they may wear; and their very existence. He asks that hours of labor be progressively reduced in proportion as modern machinery increases his productivity. He asks that the savings due to the inauguration of machinery and changes in technical methods shall be equitably divided between management and the worker. The organized worker asks that those who may be discharged be paid adequate dismissal wages to enable him to start afresh in another field; that society undertake to train him in new skills and that it make provisions through amelioratory social laws for the innocent and residual sufferers from the inevitable industrial shifts which constitute progress.

**Constitution
of the
International Union,
UNITED AUTOMOBILE, AIRCRAFT
and
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA,
(UAW-CIO)
(Affiliated with the Congress
of
Industrial Organizations)**

ARTICLE 1.

Name

The Organization shall be known as the "International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO)," hereinafter referred to as the International Union.

ARTICLE 2

Objects

To improve working conditions, create a uniform system of shorter hours and higher wages; to maintain and protect the interests of workers under the jurisdiction of this International Union.

To unite in one organization, regardless of religion, race, creed, color, political affiliation or nationality, all employees under the jurisdiction of the International Union.

To improve the sanitary and working conditions of employment within the factory, and in the accomplishment of these necessary reforms we pledge ourselves to utilize the conference room and joint agreements; or if these fail to establish justice for the workers under the jurisdiction of this International Union to advocate and support strike action.

To educate our membership in the history of the Labor Movement and to develop and maintain an intelligent and dignified membership; to vote and work for the election of candidates and the passage of improved legislation in the interest of all labor. To enforce existing laws; to work for the repeal of those which are unjust to Labor; to work for legislation on a national scale, having as its object the establishment of real social and unemployment insurance, the expense of which to be borne by the employer and the Government.

To work as an autonomous International Union affiliated with the Congress of Industrial Organizations together with other International Unions, for the solidification of the entire Labor Movement.

ARTICLE 3 Constitution

This Constitution as amended at the Chicago Convention convened on August 3, 1942, and as may hereafter be amended, shall be the supreme law of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, and can be amended only by a majority vote of delegates at succeeding Conventions.

ARTICLE 4 International Union Headquarters

The headquarters of the International Union shall be located in the City of Detroit, State of Michigan.

ARTICLE 5 Jurisdiction

The International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORK-

ERS OF AMERICA, (UAW-CIO) shall take in and hold jurisdiction over all employees of plants and shops engaged in the manufacture of parts (including tools, dies, etc.), and the assembly of these parts into farm, automobile, automotive propelled products, aircraft and agricultural implements, including employees engaged in office work, sales, distribution and maintenance thereof and such other branches of industry as the International Executive Board shall decide in accordance with the Jurisdiction Committee of the Congress of Industrial Organizations. The jurisdiction of this International Union shall be full and final.

ARTICLE 6

Membership

Section 1. The International Union shall be composed of workers eligible for membership in the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO).

Section 2. Any person eligible to become a member of the International Union who is not affiliated with any organization whose principles and philosophy are contrary to those of this International Union as outlined in the Preamble of this Constitution, may apply for membership to the Local Union having jurisdiction over the plant in which he or she is employed. The applicant must, at the time of application, be an actual worker in and around the plant. All applicants for membership in any Local Union of the International Union shall fill out an official application provided by the International Union, answering all questions contained in such application, and sign a promise to abide by all laws, rules and regulations and the Constitution of the International Union. All applications thus received

shall be referred to the Local Union for consideration. No application shall receive consideration of a Local Union, unless the applicant has been continuously employed for a period of at least thirty days immediately preceding action or consideration thereof. (This does not apply to shops in the process of organization, on strike or victimized by lockout.) Applications for membership rejected by the Local Union shall not be reconsidered until thirty days have elapsed.

Section 3. Any candidate failing to present himself for initiation within four weeks after notification of his being accepted to membership, without good and sufficient reason being given, shall forfeit all money paid by him.

Section 4. The original application signed by each member shall be retained by the Local Union for its record and official receipt shall be given to each new member for all moneys paid. All receipts shall be made out in duplicate, the original to be given to the member, the duplicate to be retained by the Local Union and made available to the International Union upon request. These duplicate receipts may be destroyed after a Local Union audit upon written approval of the International Secretary-Treasurer.

No new member will be recorded at the International office nor will initiation fee or per capita tax be accepted for new members until a monthly report is received from the Financial Secretary of the Local Union.

Section 5. Any Local Union suspending or expelling any member for cause shall notify the International Secretary-Treasurer and the latter shall notify all Local Unions of this fact forthwith. A person who has been suspended or expelled by any Local Union shall not be eligible for membership in any other Local Union until all

claims or charges against such person have been satisfactorily settled with the Local Union suspending or expelling and written notice to this effect furnished the Local Union to which such person seeks admission.

Section 6. No member shall be allowed to hold membership in more than one Local Union of this International Union at the same time. Any member of a Local Union who performs work that comes under the jurisdiction of a Garage Mechanic Local, shall be required to obtain a "Work Permit" from such Garage Mechanic Local.

Section 7. No application shall be accepted from the one designated as the head of a department, directing company policy or having the authority to hire and discharge workers. Members of the Union who are promoted to such positions shall be issued a withdrawal card immediately by the Local Union, in conformity with Article 16 of this Constitution. Members promoted to minor positions where they work with their fellow workers and do not have the power of discipline by hiring or discharging employees may retain their membership in the Local Union at the discretion of the Local Union.

Section 8. The names of all applicants for admission who are known or are suspected of having worked under the jurisdiction of a Sister Union, or about whose application there is the least doubt, may be published in the "official publication." No applicants whose names have been published shall be received into membership until thirty days after the date of such publication.

Section 9. All members of the Local Union are also members of this International Union and subject to the orders, rulings and decisions of this International Union and the properly constituted authorities of the same.

ARTICLE 7

Powers of Administration

The International Union shall be governed by its membership in the following manner:

- (a) The highest tribunal shall be the International Convention composed of delegates democratically elected by the membership of Local Unions.
- (b) Between conventions the highest authority shall be the International Executive Board which shall meet at least once every three months.
- (c) Between meetings of the International Executive Board the administrative authority of the International Union shall be vested in the International President. The International President shall be responsible to the International Executive Board for the administration of the Union between International Executive Board meetings, according to the Constitution, the actions of the International Convention and the decisions of the International Executive Board. On all matters of major importance he shall consult the other International Executive Officers. He shall report his actions to the International Executive Board for its approval or rejection.
- (d) In case of the absence or incapacity of the International President his powers and duties shall be assumed by the International Secretary-Treasurer.

ARTICLE 8

Conventions

Section 1. The International Union shall meet in Convention, convening at 10:00 A. M. on the

first Monday in October, 1943, at such place as shall be designated by the last preceding convention, provided that the date of holding such convention may be advanced within the month of September upon a resolution to that effect adopted by the International Executive Board.

Section 2. The business of the International Convention shall proceed in the following order unless otherwise ordered by the Convention:

1. Call to order.
2. Report on Credentials.
3. Reading of Convention Rules.
4. Appointing Committees.
5. Communications and Bills.
6. Resolutions, etc.
7. Reports of Committees.
8. Report of Officers and International Executive Board.
9. Nomination and Election of Officers.
10. Unfinished business.
11. New Business.
12. Adjournment.

Section 3. Special Conventions of the International Union shall be called by the International President, (1) when so instructed by a 2/3 vote of the International Executive Board or in the event of the failure of the International President to do so, by such other Board Members as the Board may designate. (2) By a referendum vote of the membership initiated upon the written request of at least fifteen Local Unions from five different states or provinces, having an aggregate membership of not less than 20 per cent of the total membership as reported to the last preceding convention. The Local Unions demanding a Special Convention must state the reason or reasons why such Convention is desired, the place and date for the Convention and the dates for mailing out and returning the ballots. It shall be the duty of the International President, or the person designated by the International Executive

Board to send out the call, to state such reason or reasons and the place and dates involved in transmitting the proposal to Local Unions for a referendum vote. The reasons for and against such Convention shall be published and forwarded to all Local Unions. Such Convention shall not have authority to consider any matter other than that which is specifically stated in the Call to the Convention. It shall be mandatory that all Local Unions hold a secret vote on the question of calling a Special Convention. All Local Unions shall vote their decision on the question involved, through Local Union procedure, by secret ballot. Local Union election boards shall tabulate the ballots and send the Local Union's vote to the International Secretary-Treasurer, who within 30 days after the setting of a deadline of a return date, shall publish the "yes" and "no" vote of each Local Union in the "official publication." If a majority of all the members voting in all Local Unions is in favor of a Special Convention, a Special Convention shall be mandatory. The Local Unions shall elect whatever qualified delegate or delegates they desire to attend the Special Convention. Local Union representation in the Special Convention shall be on the same per capita basis as govern regular Conventions.

Section 4. Delegates to the International Convention shall be elected by secret ballot from the local union of which they are members. Each Local Union shall have one delegate for 200 members or less and one additional delegate for the next 300 members or major fraction thereof, and one additional delegate for each additional 500 members or major fraction thereof, except that amalgamated local unions shall elect as many delegates as they have manufacturing units who average 150 dues-paying members or more, and that those manufacturing units who have 150 members or more elect their own delegates to the convention and those with less than 150 be

grouped together and vote as a miscellaneous group.

Each manufacturing unit of an Amalgamated Local Union shall be allotted its share of the number of delegates in proportion to the amount of per capita tax paid by the manufacturing unit through the Amalgamated Local Union.

Each Local Union shall have one vote for the first 100 members or less and one (1) additional vote for each additional 100 members or major fraction thereof, but no delegate shall have more than eight votes. The votes shall be equally apportioned among the elected delegates of each Local Union, except that an Amalgamated Local Union may apportion its votes in such manner as the Local Union decides with no delegate having more than eight votes. The total number of votes of the units of an Amalgamated Local Union shall not exceed the total votes which the Local Union is entitled to under Section 5 of Article 8 of this Constitution.

Local Unions may elect alternate delegates if they so desire. The number of alternates may be less but not more than the number of regular delegates. Local Unions shall determine the manner and order in which an alternate will replace a regular delegate and shall so advise the Credentials Committee. Regular delegates may be replaced only if recalled by their Local Union in the manner they were elected or if unable to serve.

Section 5. The number of members in each Local Union, for the purpose of Section 4, shall be determined by the average number of monthly per capita taxes paid by the Local Union to the International Union from May, 1942 to not less than two months nor more than three months prior to the next Convention. Per capita from Local Unions shall be accepted in the regular manner.

Section 6. Not less than sixty days previous to the convening of the regular or special convention, the International Secretary-Treasurer shall issue the Call to the Convention and shall furnish all Local Unions with credentials and alternate credential forms in contrasting colors, in duplicate, which must be attested as required on the forms. The original of each credential and alternate credential shall be retained by the delegate or alternate delegate and the duplicate copies shall be forwarded to the International Secretary-Treasurer. No credentials shall be accepted later than 15 days prior to the date for the convening of the Convention.

Section 7. No member is eligible to serve as a delegate from his Local Union unless he has been in continuous good standing in this International Union for a twelve-month period immediately preceding the date of the Convention and shall also have been a member of the Local Union electing him, for a period of at least 90 days preceding the Convention.

For the purpose of this section of the Constitution, members must pay their dues or secure out of work receipts in accordance with the provisions of this Constitution.

Section 8. Local Unions, in order to be entitled to representation at the Convention, shall have been affiliated with the International Union for at least three months prior to the holding of the Convention. New Local Unions shall have paid at least two months' full per capita tax prior to the month in which the Convention is to be held. If such newly chartered Local Union has been in existence at least twelve months, it shall be entitled to its full quota of delegates based upon the average number of months per capita tax paid to the International Union during said twelve months' period. With respect to newly chartered Local Unions in existence less than

twelve months prior to the Convention, the representation shall likewise be based upon the per capita tax paid to the International Union, averaged over a twelve-month period. In the case of an Amalgamated Local Union where a shop has been organized for over a year and secures a separate charter, it shall not be considered a new Local Union. Members representing Local Unions or shop organizations within Amalgamated Local Unions, which have not been in existence for twelve months prior to the Convention, shall be exempt from the provisions of Section 7 of this Article, provided they become members of their Local Union or shop organization not later than 30 days after the issuance of or acceptance under the charter thereof.

Section 9. International Officers and International Representatives of the International Union shall have a voice but no vote in the Convention of the International Union unless they are duly accredited delegates from Local Unions. Any member who is eligible may be elected to office whether or not he or she is a delegate to the International Convention.

Section 10. Copies of all resolutions, grievances and constitutional amendments to be considered by the Convention must be sent to the International Secretary-Treasurer not less than three weeks prior to the date set for the Convention. These will then be sorted and distributed by the International Secretary-Treasurer among the chairmen of the various and proper committees.

Section 11. The International Executive Board shall select from the credentials of the delegates presented, a Constitution Committee, which shall assemble at least two weeks prior to the meeting of the Convention at the place designated. It shall be the duty of said committee to take up all

recommendations concerning changes or additions to the Constitution submitted by the International Officers, International Executive Board and Local Unions to act thereon. This Committee shall have authority to originate amendments to the Constitution.

Section 12. The International Executive Board shall select from the credentials of delegates a Credentials Committee, which shall assemble at least ten days prior to the meeting of the Convention. The Committee shall examine all credentials received at the International Office and investigate the standing of the delegates and the Local Unions they represent; they shall receive the original credentials of the delegates elected to attend the Convention, and be in a position to report at the opening of the Convention.

Section 13. The International Executive Board shall select from the credentials of delegates to each International Convention a Resolutions Committee of not less than seven members, which shall assemble five days prior to the convening of the Convention. It shall be the duty of said committee to consider such resolutions as may be properly referred to it under this Constitution. This committee shall have authority to originate resolutions to be presented at the Convention.

Section 14. The International Executive Board shall select from the credentials of delegates to each International Convention, the several other committees necessary to successfully promote and execute the efficient operation of the Convention. Such committees shall convene not later than two days prior to the opening of the Convention.

Section 15. All Convention Committees shall have an odd number of, and not more than eleven, members.

Section 16. It shall be necessary for each Local Union to issue a call for the nominations

of delegates to the Convention. An election committee shall be elected by the Local Union at a regular or a specially called meeting for that purpose, not later than the day on which nomination of delegates are made. A list of nominees shall be available to the membership. Candidates shall not serve on the election committee or as challengers or observers.

The membership shall be duly notified at least 7 days in advance of the time and place of nominations and of the election of the election committee. The election committee shall handle all the details, insofar as they relate to the procedure of the election, and adopt such safeguards as are necessary to insure a fair election. After the deadline on accepting nominations set by the Local Union election committee, no election of so-called "sticker" or "write-in" candidates shall be considered legal. Polling places must be open a sufficient number of hours on one or more days to allow all members of the Local Union an opportunity to cast their ballots.

At least seven days shall elapse between the time of nominations of delegates and the date the election shall take place. All members shall be duly notified, at least seven days in advance, of the time and place of said election and the hours the polls will be open.

Delegates shall not be appointed and elections shall be by secret ballot of the membership.

ARTICLE 9

Officers and Election

Section 1. The elective officers of the International Union shall be one International President, one International Secretary-Treasurer, two (2) International Vice-Presidents, whose duties shall be to assist the International President, and such

International Executive Board Members as the Convention may determine.

Section 2. The International Executive Board Members shall be nominated and elected in the regions now established by the International Executive Board within the geographical districts as determined by the International Constitution. Only the delegates from the local unions in such regions shall nominate and vote for their International Board Member. Any member in continuous good standing for one year whose local union is located within the region can be nominated and elected, except in Regions 1 and 1-A of District 1, Detroit, in which case a member shall be eligible to run in either region, but in no case in more than one region. Such member shall be elected by the delegates of the region in which he chooses to run. It shall require a two-thirds vote of the International Executive Board to change the composition of any region within a geographical district.

Section 3. The term of office of all elective officers shall be for the period up to the next Convention and the term of office shall begin immediately upon installation.

Section 4. Nomination and election of all elective officers shall take place in the regular order of business of the Convention and election shall be determined by a majority vote of the delegates voting. In the event that more than two candidates are nominated for any one office and no candidate receives a majority vote the candidate receiving the lowest number of votes shall be eliminated. This process shall be continued until one candidate receives a majority of votes.

All elections of International Officers and International Executive Board Members shall be by roll call vote.

Section 5. No member shall be nominated or elected as an elective officer of the International Union unless he has been in continuous good standing for a period of one year.

No member of any Local Union, located in the United States of America, shall be eligible to hold any elective or appointive position in this International Union or any Local Union in this International Union, if he is a member of any organization which is declared illegal by the government of the United States of America, through Constitutional procedure.

No member of any Local Union shall be eligible to hold any elective or appointive position in this International Union or any Local Union in this International Union if he is a member of or subservient to any political organization, such as the Communist, Fascist or Nazi Organization which owes its allegiance to any government other than the United States or Canada, directly or indirectly.

Section 6. Incoming elective officers of the International Union shall be obligated and installed immediately after being elected.

Section 7. In the event of the death, removal or resignation of the International President, International Secretary-Treasurer and/or International Vice-President, he shall be replaced by a member of the International Executive Board. It shall require a majority vote of all members of the International Executive Board to elect a successor.

Section 8. In the event of the death, removal or promotion of a member of the International Executive Board, the International Executive Board shall within 30 days call a special convention for the region which the International Executive Board member represented. Such vacancy

shall be filled by a member elected by the delegates from the Local Unions in the region. Representation shall be in accordance with Article 8 in this Constitution. In the event of such death or removal from office within 60 days of a convention no election shall take place and the office shall remain vacant.

Section 9. The International Executive Board shall consist of the International Executive Board Members elected from the regions together with the International President, International Secretary-Treasurer and the International Vice-Presidents.

Section 10. Voting Strength of International Executive Board Members.

- (a) Questions coming before the International Executive Board may be decided by unit vote of its members, but any member may demand a roll call vote on any question.
- (b) Each member of the International Executive Board shall have one vote for each 1,000 members or major fraction thereof represented by him in his region.
- (c) In regions where there are more than one member of the International Executive Board the votes of the entire region shall be equally divided among each of the respective Board Members from that region.
- (d) Voting strength of each region shall be computed on the basis of average monthly per capita tax payments from each respective region through the period of twelve months commencing thirteen months preceding each quarterly meeting of the International Executive Board. The voting strength of Execu-

tive Board members at special Executive Board meetings shall be on the same basis as at the preceding regular Executive Board Meeting.

- (e) The International President, International Secretary-Treasurer and the International Vice-Presidents shall each carry the same number of votes, which shall be equal to the largest number of votes carried by any individual member of the Executive Board.
- (f) Members of the International Executive Board may cast their votes by proxy.

Section 11. The following shall be the geographical districts and the number of representatives for each district of the International Union:

- 1. Michigan 7
- 2. Ohio, West Virginia, west of and including the counties of Tioga, Lycoming, Union, Snyder, Juniata, Perry, Cumberland and Adams of the State of Pennsylvania..... 3
- 3. Indiana, Kentucky and the counties of the State of Illinois not absorbed by other geographical districts 1
- 4. Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, Nebraska, Montana, Wyoming and counties of McHenry, Boone, Winnebago, Stephenson, Daviess, Lake and Cook in the State of Illinois..... 1
- 5. Missouri, Arkansas, Louisiana, Kansas, Oklahoma, Texas, Colorado, New Mexico and the counties of Madison, Saint Clair, Jersey and Monroe of the State of Illinois 1

6. Washington, Oregon, California, Idaho, Nevada, Utah and Arizona 1
7. Dominion of Canada..... 1
8. Tennessee, Virginia, North Carolina, South Carolina, Mississippi, Alabama, Georgia, Florida and the District of Columbia, Maryland and Delaware 1
9. New York, New Jersey, Rhode Island, Connecticut, Massachusetts, Vermont, New Hampshire, Maine and those parts of Pennsylvania east of and including the counties of Bradford, Sullivan, Columbia, Montour, Northumberland, Dauphin and Lancaster..... 2

ARTICLE 10

Salaries

Section 1. The Salaries of the International President, International Secretary-Treasurer, International Vice-Presidents and International Executive Board Members in full for services rendered by each of said officers during his term of office shall be the following sums:

International President \$9,000.00 per annum.

International Secretary-Treasurer \$8,500.00 per annum.

International Vice-Presidents \$7,000.00 each per annum.

International Executive Board Members \$5,000.00 each per annum.

Salaries shall be payable in weekly installments.

Section 2. (a) The International President, International Secretary-Treasurer, International Vice-Presidents and International

Executive Board Members shall devote their full time to their duties and shall not serve as an officer of a Local Union, District Council or any other Subordinate Body, beyond ninety (90) days after being elected as an International Officer.

- (b) An International Executive Board Member shall serve under the general direction of the International President, subject to the decisions of the International Executive Board.

Section 3. The International President, International Secretary-Treasurer and the International Vice-Presidents when traveling on union business or when away from their duly designated home offices shall be allowed first class transportation fare by the shortest route to and from their destination, plus personal hotel and incidental expenses up to \$10.00 per day. In addition to the above, when those officers are required to incur organizational expenses for the good of this International Union, such organizational expenses shall be presented in itemized form for payment, it being understood that payment of all such items is under the control of the International Executive Board.

Section 4. International Executive Board Members and International Representatives when traveling on Union business or when away from their duly designated home offices shall be allowed first class transportation fare by the shortest route to and from their destination plus personal hotel and incidental expenses up to \$10.00 per day. In addition to the above, when these officers are required to incur organizational expenses for the good of the International Union, such organizational expenses shall be presented in itemized form for payment, it being understood that payment of all such items is under the control of the

International Executive Board. The expense accounts of International Executive Board Members and International Representatives shall be strictly itemized and checked and these accounts be made available to any interested Local Union.

Section 5. The compensation of any member of the International Union performing service under direction of the International Executive Board shall be an amount for time lost equal to his earning capacity, except that this remuneration shall be not less than \$10.00 per day, or in case of International Representatives their weekly salary.

At the discretion of the International Executive Board, International Representatives shall be paid not less than \$60.00 per week nor more than \$90.00.

Section 6. When any member is required by the International Union to perform service away from his home, he shall be allowed in addition to the amounts set forth above, first class transportation fare by the shortest route to and from his destination and actual hotel and incidental expenses, not to exceed \$10.00 per day, provided that an itemized bill shall in all cases be rendered to the International Secretary-Treasurer.

Section 7. The International President, International Secretary-Treasurer, International Vice-Presidents and International Executive Board Members shall on their first election be entitled to traveling expense for themselves and families and the moving of household goods from their home to their assigned location and also on return at the close of their official terms.

Section 8. International Officers, International Executive Board Members, International Representatives with a year's service, and each permanent employee with one year's service with this International Union shall be allowed a two weeks'

vacation with pay each year, but such vacation shall not interrupt the ordinary working of their office.

Section 9. No person in the International Union who holds a paid full-time job in the union shall hold any other paid position in the union at the same time.

ARTICLE 11

Duties of the International Executive Board

Section 1. The International Executive Board shall execute the instructions of the International Convention and shall be the highest authority of the International Union between Conventions, subject to the provisions of this Constitution, and shall have the power to authorize strikes, issue charters and punish all subordinate bodies for violation of this Constitution.

Section 2. The International Executive Board shall have power to revoke charters and to reorganize subordinate bodies in one of the two following manners:

- (a) In case of disputes or conditions within a subordinate body that might threaten its existence the International Executive Board by majority vote may reorganize the subordinate body by ordering a Special Election to be held within thirty (30) days after the members in good standing are notified by mail. Under no circumstances shall more than one such Special Election be held within a year's period in any one subordinate body. Under this provision the elected officers of the subordinate body shall continue to hold office until the election and may run for re-election. The International Executive Board may have two representatives to work with the elected Local Union Election Committee.

- (b) For violation of this Constitution or of the laws of this International Union, or in case of disputes within any subordinate body affecting the welfare of its membership or its existence, the International Executive Board may by two-thirds vote of the entire Executive Board, after a hearing, revoke the charter or suspend any officer or officers from office and take over supervision of the subordinate body until its affairs have been properly adjusted. In any case of suspension of officers, an election of new officers shall take place within sixty (60) days from date of order, whereupon the subordinate body shall be returned its autonomy under this Constitution.

Section 3. The International President, International Secretary-Treasurer and the International Vice-Presidents shall be members of the International Executive Board with voice and vote.

Section 4. In case of vacancy, the board shall cause such vacancy to be filled until the next Convention, in accordance with Article 9.

Section 5. It shall repeal any By-Laws of any subordinate body, which do not conform to this Constitution.

Section 6. It shall furnish all charters and initial supplies necessary to operate the subordinate bodies of the International Union.

Section 7. It shall decide all questions involving the interpretation of this Constitution between Conventions.

Section 8. It shall pass upon all claims, grievances and appeals from the decisions of subordinate bodies of the International Union, in the manner provided by this Constitution.

Section 9. It shall cause the books and accounts of the International Secretary-Treasurer to be audited by a Certified Public Accountant quarterly and this report shall be transmitted to all affiliated Local Unions as soon as completed. Enclosed also shall be a report of the quarterly activities of the International Union and a summary and explanation of the actions of the International Executive Board, to each Local Union of this International Union. The International President shall issue to all Local Unions and in the official publication a quarterly report on the activities of the International Union.

Section 10. If any elective officer is found guilty and removed from office through trial procedure, the vacancy shall be filled in accordance with this Constitution.

Section 11. Upon written request of three members of the International Executive Board, the International Secretary-Treasurer within forty-eight (48) hours of receipt of such a request shall poll the International Executive Board on the question of a Special Board meeting. Upon a majority vote for such a meeting the President shall convene the Board within five days. In case the International President fails to convene the Board within the time allotted, the International Secretary-Treasurer or a Board Member previously designated by the Board shall convene the Board.

Section 12. Two-thirds of the number of members comprising the International Executive Board elected at the preceding Convention shall constitute a quorum.

Only a majority of the International Executive Board can adjourn a board meeting.

Section 13. The International Executive Board shall set up such departments as provided for in

this Constitution. It may, if voted by a two-thirds majority, create additional departments for promoting the business of this International Union or the welfare of its membership. It may hire professional specialists not members of the International Union for such departments if they are not available within the membership.

Section 14. The International Executive Board shall have power to levy and collect assessments on the membership of the Local Unions as provided in this Constitution.

Section 15. If and when a strike has been approved by the International Executive Board, it shall be the duty of the International Executive Board to render all financial assistance to the members on strike consistent with the resources and responsibilities of the International Union.

Section 16. Financial officers of Local Unions of this International Union shall be bonded by such methods and agency as the International Executive Board may determine and for such amounts as each Local Union Executive Board may decide.

Section 17. The International Executive Board shall have power to adjust disputes between employers and employees and to make contracts with employers in accordance with this Constitution.

Section 18. The International Executive Board may rescind, reverse or repeal any action of any of the International Officers or Representatives.

ARTICLE 12

Duties of International Officers

Section 1. International President.

(a) The International President shall preside at all sessions of the International Conventions and all sessions of the International Executive

Board. He shall perform such other duties as are necessary to protect and advance the interests of the International Union, and shall report his activities quarterly to all Local Unions and the general membership through the official publication. He shall report his activities to the quarterly meeting of the International Executive Board for approval or rejection and to the International Convention.

(b) Between sessions of the International Executive Board he shall execute the instructions of the International Executive Board and have full authority to direct the working of this organization within the provisions of this Constitution and shall report his acts to the regular quarterly meetings of the International Executive Board.

(c) As set forth in this Constitution or voted by the International Executive Board, he shall assign any elected officer to represent or direct the workings of this International Union.

(d) The International President shall have power to withdraw any field assignment made to any elected officer when he becomes convinced that the officer has been derelict in his duty or been guilty of a dishonest act. Such withdrawal of assignment shall not act to suspend the vote or pay of such an officer, which power lies only in the International Executive Board as provided in this Constitution. Any officer whose assignment is withdrawn may follow the procedure outlined in Article 11, Section 11, to convene the International Executive Board. If the International Executive Board reaffirms the original assignment then the President shall not again suspend this assignment.

(e) He shall appoint such Representatives as he may deem necessary from time to time, such appointments to be pending the approval of the International Executive Board. He may remove

from the payroll any Representative derelict in the performance of any duty, guilty of any dishonest act, or to conserve the finances of this International Union, pending the approval of the International Executive Board at its next session.

(f) After submitting his recommendations to the International Executive Board, he shall hire such legal, technical or professional help as is necessary to efficiently operate such departments of this International Union, except in the department of the International Secretary-Treasurer.

(g) He shall fill by appointment all vacancies occurring in the International Office Staff, except in the department of the International Secretary-Treasurer as otherwise provided for in this Constitution.

(h) He shall decide disputes or questions in controversy, except such cases as follow the procedure and conditions as outlined in this Constitution, all his decisions being subject to appeal, first to the International Executive Board, and then to the Convention. Notice in writing of appeal of any decision of the International President must be filed with the International Secretary-Treasurer and the International President within thirty (30) days from date of decision.

(i) He shall have authority to call special meetings of Councils or Local Unions whenever he deems such meetings necessary to protect the interests of its membership, after proper notification or consultation with officers of subordinate bodies involved. He shall have the authority to delegate such duties to any International Officer or Representative he may name, provided such delegation of authority is written, signed by him and bears the seal of the International Union.

(j) He shall be a delegate to all Conventions of the Congress of Industrial Organizations.

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(k) He shall convene regular and special sessions of the International Executive Board whenever necessary.

(l) He shall be empowered to grant district or territorial dispensations relating to initiation fees and payment of per capita tax to the International Union with the approval of the International Executive Board, when in his judgment such dispensations will add to the growth of or conserve the interests of this International Union.

(m) He shall devote all his time to the affairs of this International Union, executing the instructions of the International Executive Board and exercising general supervision over all departments of this International Union.

(n) During his term of office he shall establish his residence in the Metropolitan area of the city where the headquarters of this International Union is established.

Section 2. International Secretary-Treasurer.

(a) The International Secretary-Treasurer shall attend all sessions of the International Convention and of the International Executive Board. He shall cause to be recorded the proceedings of the International Convention and meetings of the International Executive Board. He shall have charge of and preserve all books, documents and effects of the International Office except such records as properly belong to the office of the International President. He shall issue receipts for all moneys paid to the International Union; pay all bills and current expenses, unless otherwise ordered by the International Executive Board. All expenditures shall be paid by checks countersigned by the International President when the latter is satisfied of their correctness. The International Secretary-Treasurer shall keep copies of all important correspondence sent out and received by his office. He shall submit ex-

penses of each officer and employee, together with a detailed statement of receipts and disbursements of all money belonging to this International Union to the International Executive Board.

(b) The International Secretary - Treasurer shall be the custodian of the funds of this International Union, and at the direction of the International Executive Board shall deposit all funds of the International Union in some responsible bank or banks. He shall invest all funds in excess of \$250,000 with banks giving interest-bearing "Certificates of Deposit," or invest such excess in bonds of the United States Government.

(c) The seal of the International Union shall bear the following words: "International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO), chartered August 26, 1935, affiliated with CIO." The seal of this International Union shall bear the design representing the Automobile, Aircraft and Agricultural Implement divisions of this International Union. The International Executive Board shall be authorized to adopt a seal appropriate with the above provisions. The seal of the International Union shall be held by the International Secretary-Treasurer in trust, for the use of the membership in their organization affairs; and he shall prosecute any and all proceedings proper to prevent the wrongful use of or imitation of the seal, or of the name "International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA." He shall also take such measures as may be necessary to register or copyright the seal, and the International name, the label, insignia and any other property of the International Union that he may consider necessary to copyright or register.

(d) The International Secretary - Treasurer shall give a bond, amount of which shall be de-

terminated by the International Executive Board and paid for by the International Union, to insure faithful discharge of his duties. The International President shall act as trustee of and hold the bond. The International Secretary-Treasurer shall not have more than \$250,000 subject to his order at any time.

(e) The International Secretary - Treasurer shall perform such other duties as are herein provided for in this Constitution or may be assigned to him by the International Executive Board.

(f) When a Local Union has failed to report and pay the per capita tax and assessments as provided for herein, the International Secretary-Treasurer shall notify the Local Union President and Board of Trustees of that fact.

(g) The International Secretary - Treasurer shall keep a complete record of the membership of the International Union.

(h) The International Secretary - Treasurer shall, with the consent of the International Executive Board, employ such assistants as may be necessary to conduct the affairs of his office.

(i) The International Secretary - Treasurer shall issue a standard "Work Permit" card which shall be furnished to Local Unions at cost. Such work permit shall be cancelled or renewed thirty (30) days following the date contained thereon. The charge for each work permit or renewal by the Local Union shall be not less than \$1.00, one-half ($\frac{1}{2}$) of which shall be paid to the International Union. It shall be left to the discretion of the Local Union to determine the duration of the period for which work permits are issued.

(j) The International Secretary - Treasurer shall be a delegate to all Conventions of the Congress of Industrial Organizations.

(k) The International Secretary - Treasurer shall assume the powers and duties of the Interna-

tional President in case of the latter's absence or incapacity.

Section 3. International Executive Board Members.

(a) An International Executive Board Member shall have direct supervision over all organizational activities within the region from which he is elected. In case a geographical district has more than one regional board member, his activity shall be confined within a definite area within his region, which area shall be clearly defined by the International Executive Board.

(b) His field of activity shall be limited to shops within his region unless directed to other activities at the direction of the International Executive Board or the International President.

(c) He shall examine all contracts negotiated within his region before they are signed and submit them to the International Executive Board with his recommendation, negotiate disputes with the Bargaining Committee, wherever possible, act to obtain favorable legislation for labor and work for the general welfare of the membership.

(d) Where district councils are established within his region, he shall attend their meetings when possible and work in cooperation with such councils. He shall submit quarterly reports of organizational activity within his region to the International President and also to the International Executive Board, 15 days prior to the convening of the quarterly meeting of the International Executive Board, for its approval.

ARTICLE 13

International Representatives

Section 1. International Representatives' Commissions must be approved and signed by the International President and shall be countersigned by the International Secretary-Treasurer and be

subject to the approval of the International Executive Board.

Section 2. International Representatives shall work under the jurisdiction of the International President subject to the approval of the International Executive Board and under the direct supervision of the International Executive Board member of the region to which he is assigned, unless otherwise commissioned.

Section 3. No person can be appointed an International Representative unless he is a member of continuous good standing of the International Union for a period of one year.

Section 4. Appointed International Representatives may be removed by the International Executive Board or by the International President subject to the approval of the International Executive Board.

ARTICLE 14

Fiscal Year

The Fiscal Year of the International Union shall begin the first day of June of each year and end on the 31st day of May of the succeeding year.

ARTICLE 15

Initiation Fees and Dues

Section 1. The Initiation Fee, no part of which shall be considered as a Local Union fine, shall be not less than \$2.00 (two dollars) nor more than \$15.00 (fifteen dollars) for membership in a Local Union of the International Union. One dollar (\$1.00) of each initiation fee shall be forwarded to the International Secretary-Treasurer.

Section 2. All dues and assessments are payable on or before the first day of each month to the Financial Secretary of the Local Union. The

dues each member pays shall be \$1.00 (one dollar per month. Five cents (.05) of each month's due payment must be laid aside by the Local Union as a special fund to be used in case of strike or lockout. Two and one-half cents (.02½) of each month's dues payment must be laid aside by the Local Union as a special fund to be used only for educational or recreational purposes as outlined in Article 25 of this Constitution.

Section 3. Any member becoming in arrear in dues or assessments within the time required by a local union, which in no case shall be more than two calendar months, unless officially excused from the payment of same by the local union, shall automatically be suspended from membership and can be reinstated only by paying a reinstatement fee and such other penalties as may be imposed by the local union in which he was suspended. One dollar of each reinstatement fee shall be forwarded to the International Secretary-Treasurer. Members receiving "out of work" credit must pay all assessments when they are re-employed. Where local unions impose the payment of back dues, the International Union shall receive its per capita tax share of each dollar of such back dues.

Local Unions may notify members of their delinquency. However, failure of the Local Union to notify the member of delinquency shall not excuse or operate such member from automatic suspension.

If said member's dues or assessments are not paid by the end of the time allotted by the Local Union, said member shall be automatically suspended and subject to the penalties as outlined in this Constitution. When a member is so suspended the Financial Secretary shall make note of said suspension on his monthly report to the International Secretary-Treasurer.

When a member has been suspended for non-payment of dues or assessments and the financial

secretary or other officers of the Local Union accept such payment thereafter, acceptance of his dues or assessments shall not operate to exonerate or reinstate the member, or to waive the provisions of the Constitution relative to forfeiture and reinstatement of members.

The provisions of this section shall not apply to members who have entered the military service of the United States of America or the Dominion of Canada, who shall be entitled to an honorable military service membership and whose membership in continuous good standing in the Local Union shall not be broken by such service provided he reports to his Local Union at the time of entering such service, and becomes subject to the provisions of this section at the end of such military service.

Section 4. All Local Unions shall pay to the International Union a per capita tax of forty cents (.40) per month per dues-paying member, five cents (.05) of which shall be set aside for the "*United Automobile Worker*," the official publication of the International Union, or its successor designation. It shall be understood, however, that the subscription to the official publication is voluntary and any member who so desires may withhold the same. Two cents (.02) shall be set aside in a special fund as the International Union Educational Fund. One-half cent ($.01\frac{1}{2}$) shall be set aside in a special fund as the International Union Recreational Fund, which fund shall be apportioned to each Region on a per capita basis.

Where Local Unions deem it necessary they may exonerate certain members of the Local Union. However, such members shall be considered as dues-paying members and per capita tax shall be paid on such members.

Section 5. The International Executive Board shall not have authority to levy assessments in excess of one dollar in any one calendar year.

If further assessments are deemed necessary by the International Executive Board, it shall become mandatory upon them to send a communication to all Local Unions, stating reasons for the assessment and asking their approval of the assessment.

Such assessment shall be levied only when approved by a majority vote of the membership present and voting in all Local Unions at meetings specially called and duly advertised for the purpose of considering the assessment. Voting must be by secret ballot. The certified tabulation of the vote in each Local Union must be forwarded to the International Secretary-Treasurer. The International Secretary-Treasurer shall, upon receipt of returns from all Local Unions, tabulate the entire vote and have the tabulation included in the official publication. If the tabulation of the votes from all Local Unions shows a majority in favor, the assessment shall become effective at once, and mandatory on the entire membership of the International Union.

All assessments levied shall be collected prior to any dues collections after date of assessment.

The International Secretary-Treasurer shall keep all assessments collected for the International Union, in a special fund and a complete record of all moneys collected and disbursed shall be made a part of the records of the International Union, and said record shall be available for inspection by a committee of any Local Union, upon demand.

Section 6. All per capita tax, assessments and all other moneys collected for the International Union, shall be transmitted to the International Secretary-Treasurer by the twentieth of each month.

The International Secretary-Treasurer will issue the official receipt of the office of Secretary-Treasurer for all moneys collected.

Section 7. Any member becoming out of work shall report in some manner, within the month, to the Financial Secretary of the Local Union. Such a member shall be exempt from dues in accordance with Local Union provisions for the period of such idleness and the Financial Secretary shall issue to such member a regular receipt, bearing the stamp, "Unemployed," or the letters "O/W" (out of work) provided, however, that such member must report in person, by mail, or otherwise, to the Financial Secretary, either monthly or within the two-month period. No "Out-of-Work" credits will be issued unless the member has paid his dues up to and including the month previous to his layoff.

Members working in the shop forty hours in any calendar month shall not be entitled to an "Out-of-Work" receipt.

Any member who has paid his dues in advance and later becomes entitled to "Out-of-Work" receipts as provided for in this Constitution, shall, when he returns to work, be given credit on future dues for such months that entitle him to "Out-of-Work" receipts.

Section 8. Any member laid off from his plant but regularly employed on jobs outside the jurisdiction of the International Union shall take a withdrawal card, or in order to maintain himself in good standing in his Local Union, shall pay regular dues of \$1.00 per month.

Section 9. The Local Union shall use a receipt book or receipting register and form of official receipt furnished by the International Union. All receipts shall be made out in duplicate, the original to be given to the member, the duplicate to be retained by the Local Union and made available to the International Union upon request. The International Secretary-Treasurer may order the destruction of the duplicate receipts when they are no longer necessary.

Local Unions covered by check-off agreements or having a check-off arrangement will be exempt from the above provisions of this section providing the company clearly shows on the check stub or pay envelope of each union employee the amount of the deduction and the reason therefor.

Section 10. A Local Union failing to pay full per capita tax and all assessments due the International Union within a two-month period, shall stand automatically suspended until the Local Union has been reinstated through payment of deficiency incurred, unless exonerated from payment of same as provided for in Article 12, Section 1 (L).

Section 11. A local union failing to pay all of its financial obligations due the International Union shall not be entitled to a voice or vote in the International Convention.

ARTICLE 16

Transfer and Withdrawal Cards

Section 1. All transfer and withdrawal cards shall be supplied by the International Secretary-Treasurer; they shall be available to the Local Unions in duplicate form in pads and shall be sold at cost.

Section 2. Any member in good standing leaving the jurisdiction of the International Union is entitled to an honorable withdrawal card. Any member leaving the jurisdiction of a Local Union to work under the jurisdiction of another Local Union shall be required to transfer forthwith, provided that this shall not apply to members holding a local constitutional office who involuntarily left the jurisdiction of their local.

Section 3 (a) A member shall be entitled to a withdrawal card provided he shall have his dues paid up to and including the current month, or

out-of-work receipts, and there are no charges or debts owed to the local union or assessments pending against him.

(b) A member shall be entitled to a transfer card provided there are no charges or debts owed to the local union, or assessments pending against him. It shall be the duty of the local union and/or the member to obtain a transfer card.

(c) A member who is transferring to a check-off plant and who has paid his dues in advance shall not be required to pay duplicate dues. The local union receiving the check-off dues shall refund the duplicate payment to the member involved, and such local union shall be compensated for the amount of such refund under rules to be adopted by the International Executive Board.

Section 4. The Financial Secretary shall, upon issuing or receiving a transfer or withdrawal card, notify the International Secretary-Treasurer upon proper forms provided by the International Union.

Section 5. All transfer and withdrawal cards issued shall bear the seal of the subordinate body from which issued.

Section 6. A subordinate body may charge a maximum of twenty-five cents (.25) for each transfer or withdrawal card issued.

Section 7. When a holder of an honorable withdrawal card loses the same he can only receive a duplicate thereof by applying to the International Secretary-Treasurer of the International Union, who shall issue such duplicate on the payment of one dollar after sufficient time has elapsed for an investigation to be made. Duplicates shall be furnished from a series separate from the regular honorable withdrawal cards and have printed thereon the words "Duplicate Card." No

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duplicate for a lost honorable withdrawal card shall be issued, except with the consent of the Union issuing the original card, and unless application is made within thirty days from the time such card is lost.

Section 8. The International Executive Board shall be empowered to draw up or draft a type of transfer card and withdrawal card suitable to the requirements of the organization.

Section 9. Withdrawal cards may be terminated by the Local Union issuing them or by International Officers for good and sufficient reasons.

Section 10. Members transferred from another CIO Union to the International Union shall, upon showing evidence of good standing membership in such other CIO Union, be admitted into the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO) without payment of an initiation fee.

Section 11. Any Local Union Officer, Shop Committee Member or Shop Steward offered a personnel or Labor Relations position with management shall secure permission from his Local Union before accepting such position in order to be entitled to an honorable withdrawal card. Members violating this section shall be subject to expulsion from the Union.

Section 12. Any International Officer, Regional Director, International Representative or any other full-time employee of the International Union offered a personnel or Labor Relations position with management shall secure permission from the International Executive Board before accepting such position in order to be entitled to an honorable withdrawal card. Members violating this section shall be subject to expulsion from the Union.

ARTICLE 17

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Unemployment, Welfare and W.P.A.

Section 1. The various regions where unemployment is a major problem, shall make provisions for handling the Welfare and W.P.A. grievances of members laid off from the shops either on a local, district or regional basis.

Section 2. In those areas where U.A.W. members laid off from the shops constitute the majority of workers on W.P.A., the Region may elect to establish a W.P.A. Auxiliary to organize and represent the W.P.A. workers. Pending the establishment of a C.I.O. organization for W.P.A. workers, said U.A.W. Auxiliaries may at the request of the other C.I.O. unions assume jurisdiction over W.P.A. workers ordinarily eligible for membership in such unions.

Section 3. The International President may assign a national representative to aid Local Union and District Welfare Committees and to coordinate the work of such W.P.A. Auxiliaries as have been established.

Section 4. The International Union, through recommendation of the Regional Board member, may appropriate funds to assist Local Unions or Districts where their retained per capita tax is insufficient to defray necessary expenses of Local Unions or their district, for itemized expenses involved, upon approval of the Regional Director of the area.

ARTICLE 18

Contracts and Negotiations

Section 1. It shall be the established policy of the International Union to recognize the spirit, the intent and the terms of all contractual relations developed and existing between Local Unions and employers, concluded out of conferences between the Local Union and the employers, as

binding upon them. Each Local Union shall be required to carry out the provisions of contracts so negotiated.

Section 2. When a grievance exists between a Local Union and management and negotiations are in progress, and an International Union officer or representative is participating by request of the Local Union involved, a committee selected by the Local Union shall participate in all conferences and negotiations. Copies of all contracts shall be filed with the International Secretary-Treasurer.

Section 3. No local union officer, International Officer or International Representative shall have the authority to negotiate the terms of a contract or any supplement thereof with any employer without first obtaining the approval of the local union. After the local union has approved a contract at a meeting called especially for such purpose, it shall be referred to the regional director for his recommendation to the International Executive Board for its approval or rejection. In case the regional Board Member recommends approval the contract becomes operative until final action is taken by the International Executive Board.

National agreements and supplements thereof shall be ratified by the local unions involved.

Section 4. The general meeting of the Local Union members of a manufacturing establishment under the jurisdiction of an amalgamated Local Union shall be the highest authority for handling problems within the manufacturing establishment, in conformity with the By-Laws of the Local Union and this International Constitution.

Section 5. The International Executive Board shall protect all Local Unions who have succeeded in establishing higher wages and favorable conditions and have superior agreements, so that no

infringement by Local Unions with inferior agreements in plants doing similar work may be committed against the Local Union with advanced agreements.

ARTICLE 19

National and Corporation Bargaining Councils

Section 1. In cases where there are a number of locals involved in negotiations and bargaining with a major Corporation or an association of corporations the International Executive Board shall set up an Intra-Corporation Council. Such locals so involved shall be members and shall participate through duly elected delegates. When the large Corporation or National Association has widely scattered branches the Intra-Corporation Council shall set up Sub-Corporation Councils.

The International Executive Board shall determine the district in which Sub-Corporation Councils shall be established. The Intra-Corporation Council shall be composed of delegates from the Sub-Corporation Council.

Section 2. Directors to work with such Councils shall be appointed by the President subject to the approval of the International Executive Board.

Section 3. Voting at National Intra-Corporation Council meetings shall be based on per capita tax paid to the International Union by the various Local Unions participating.

Section 4. The purpose of the Intra-Corporation Council shall be to coordinate the demands of the separate members and to formulate policies in dealing with their common employer. The Intra-Corporation Council shall be convened not later than 30 days prior to the opening of negotiations for a new National Corporation agreement to formulate new contract demands. The Council shall deal only with matters pertaining

to problems arising in their immediate corporations. It shall be understood that such Intra-Corporation Council is not a legislative body of the International Union and shall not deal with policies of the International Union other than those concerning their own immediate corporation problems.

ARTICLE 20

National and Regional Wage-Hour Conferences

Section 1. Upon the written request of at least two Local Unions to the Competitive Shop Department, National and Regional Wage-Hour Conferences may be called for the purposes of facilitating a discussion of problems related to wages, hours, production standards and other conditions of work within a competitive or allied group; and to assist in the establishment of uniform contractual provisions within the industry.

Section 2. Activities of both National and Regional Wage-Hour Conferences shall be coordinated through the offices of the Competitive Shop Department in cooperation with the Research Department of the International Union.

ARTICLE 21

NATIONAL AND REGIONAL WAGE-HOUR COUNCILS

(a) National Wage-Hour Councils

National Wage-Hour Councils shall be established by the International Executive Board only in those cases where National Wage-Hour Conferences would prove inadequate in meeting the problem of organizing the unorganized competitive shops and coordinating the work of establishing uniform standards within a competitive group. In the event such Wage-Hour Councils are established, they shall be governed by the following provisions:

Section 1. The National Wage-Hour Councils shall consist of duly elected representatives from the Regional Wage-Hour Councils and plants where there are no Regional Wage-Hour Councils of a single industry.

Section 2. It shall be the duty of the National Wage-Hour Council to assist and cooperate with the Competitive Shop Department and the International President in the organization of unorganized plants.

Section 3. It shall be the duty of the National Wage-Hour Council to work in conjunction with the Competitive Shop Department and in cooperation with the Research Department of the International Union to standardize wages, hours and general working conditions of the organized plants in their industry, and to strive to get a single agreement covering their industry nationally.

Section 4. In case competitive plants in a given industry start negotiations on a national agreement, they shall make use of the National Bargaining Council provisions.

(b) Regional Wage-Hour Councils

Regional Wage-Hour Councils shall be established by the International Executive Board only in those cases where wage-hour conferences would prove inadequate in meeting the problems of organizing the unorganized competitive shops, and coordinating the work of establishing uniform standards within a competitive group. In the event such Wage-Hour Councils are established, they shall be governed by the following provisions:

Section 1. A regional Wage-Hour Council shall consist of duly elected representatives from plants or departments in plants doing similar work who can conveniently get together.

Section 2. It shall be the duty of the Regional Wage-Hour Council to gather and send to the Re-

search Department of the International Union and the National Wage-Hour Council of which they are a part, all data on wages, hours and other working conditions of the plants of their industry in their region.

Section 3. It shall be the duty of the Regional Wage-Hour Council to assist in the organization of unorganized plants of their industry under the direction of the Regional Director.

Section 4. It shall be the duty of the Regional Wage-Hour Council to work toward standardization of improved wages, hours and general working conditions of the organized plants of their industry in their region, and to strive to get a single agreement covering their industry in their region.

Section 5. It shall be the duty of the Regional Wage-Hour Council to send regular reports to the National Wage-Hour Council in their industry and to the Competitive Shop Department of the International Union.

Section 6. It shall be the duty of the Regional Wage-Hour Council to send delegates to, and assist in the formation of, a national Wage-Hour Council for their industry.

Section 7. It shall be understood that such Wage-Hour Councils are not legislative bodies of the International Union and shall not deal with policies of the International Union other than those concerning competitive plant problems.

ARTICLE 22

Competitive Shop Department

Section 1. The International Executive Board shall create a Competitive Shop Department for the International Union.

Section 2. The International President shall appoint a director for the Competitive Shop Department, subject to the approval of the Interna-

onal Executive Board, who is best qualified by experience and who now is and who has been a member of the Union for at least two years. The International Executive Board may remove the Director of the Competitive Shop Department.

Section 3. It shall be the duty of the Competitive Shop Department to aid in organizing and calling National and Regional Wage-Hour Conferences. National and Regional Wage-Hour Conferences may be called by the Director of the Competitive Shop Department after consultation with the Regional Director concerned, subject to the approval of the International President.

Section 4. It shall be the duty of the Competitive Shop Department to direct the organization of unorganized competitive shops by making recommendations for assignment of organizers to the Regional Directors, the International President and the International Executive Board.

Section 5. Organizers working on such assignments shall make reports on the progress of organization to the Competitive Shop Department as well as to their Regional Directors.

Section 6. It shall be the duty of the Competitive Shop Department to check all agreements referred to it by the International Executive Board, and to make recommendations to the various locals for the standardization of wage-hour provisions throughout given competitive industries.

ARTICLE 23

Research Department

Section 1. The International Executive Board shall create a Research Department for the International Union.

Section 2. The President of the International Union shall appoint a director for the Research Department who shall be selected from the Inter-

national Union, if possible, and who is competent and qualified by previous experience and training to do such work; but such appointment shall not be considered final until it is approved by the International Executive Board at their next meeting. It shall be mandatory that the International Research Department shall be kept informed of changes in rates, working standards and so forth by all local unions through the Regional offices.

- (a) It shall gather and keep on file information on wages, hours and other conditions of employment and any general information about the automotive industry.
- (b) It shall gather and keep on file any other information which the International Executive Board, Regional Directors, Local Unions, Wage-Hour Councils or any other subdivision of the International Union may require from time to time.
- (c) It shall send to all International Executive Board Members, International Representatives, Local Unions and Wage-Hour Councils a monthly bulletin on problems of general interest to the members of the Union.
- (d) It shall submit to the International Executive Board at their meetings, a regular report on general conditions in the automotive industry which are of importance to the International Union.
- (e) It shall submit a complete and thorough report to the conventions of the International Union on "The Automotive Industry and the International Union."
- (f) It shall supply Wage-Hour Councils with financial reports of parts plants in their industry and such other material as they may request.

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ARTICLE 24

Strikes

Section 1. Whenever any difficulty arises within the jurisdiction of any Local Union within the scope involved, between its members and any employer or employers, growing out of reduction in wages, lengthening of hours of labor, or other advances incident to the conditions of employment, or whenever any Local Union desires to secure for its members an increase in wages, a shorter work day or other changes in the conditions of employment, the Local Union involved shall call a meeting of all members to decide by secret ballot whether the proposed changes shall be accepted or rejected. The majority vote of those present and voting on the question shall decide. If, as a result of this decision, a strike is decided upon, the Local Union Executive Board shall notify all members, and it shall require a two-thirds majority vote by secret ballot of those voting to declare a strike. Only members in good standing shall be entitled to vote on the question of declaring a strike.

Section 2. If the Local Union involved is unable to reach an agreement with the employer without strike action, the Recording Secretary of the Local Union shall prepare a full statement of the matters in controversy and forward the same to the Regional Director and International President. The Regional Director or his assigned representative in conjunction with the Local Union Committee shall attempt to effect a settlement. In case of failure to effect a settlement he shall send to the International President his recommendation for approval or disapproval of a strike. Upon receipt of the statement of matters in controversy from the Regional Director, the International President shall prepare and forward a copy thereof to each member of the International Executive Board together with a request for their vote

upon the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote of the members of the International Executive Board, the International President shall forthwith notify in writing the Regional Director and the Local Union of the decision of the International Executive Board.

Section 3. In case of an emergency where delay would seriously jeopardize the welfare of those involved, the International President, after consultation with the other International Officers, may approve a strike pending the submission to, and securing the approval of, the International Executive Board, provided such authorization shall be in writing.

Section 4. Before a strike shall be called off, a special meeting of the Local Union shall be called for that purpose, and it shall require a majority vote by secret ballot of all members present to decide the question either way. Whenever the International Executive Board decides that it is unwise to longer continue an existing strike, it will order all members of Local Unions who have ceased work in connection therewith to resume work and thereupon and thereafter all assistance from the International Union shall cease.

Any Local Union engaging in a strike which is called in violation of this Constitution and without authorization of the International President and/or the International Executive Board shall have no claim for financial or organizational assistance from the International Union or any affiliated Local Union.

The International President, with the approval of the International Executive Board shall be empowered to revoke the charter of any Local Union engaging in such unauthorized strike action,

hereby annulling all privileges, powers and rights of such Local Union under this Constitution.

Section 5. In cases of great emergency when the existence of the International Union is involved, together with the economic and social standing of our membership, the International President and the International Executive Board shall have authority to declare a general strike within the industry by a two-thirds vote of the International Executive Board whenever in their good judgment it shall be deemed proper for the purpose of preserving and perpetuating the rights and living standards of the general membership of our International Union, provided under no circumstances shall it call such a strike until approved by a referendum vote of the membership.

Section 6. In case of a general strike it shall require a majority vote of the International Executive Board before the strike is officially called off.

ARTICLE 25

Education Department

Section 1. Education shall be a recognized part of the business of the International Union and of each Local Union, particularly education in history, principles and objectives of this International Union and the Labor Movement.

Section 2. The International President shall appoint an Educational Director over the Educational Department, and such appointment shall be subject to approval of the International Executive Board.

Section 3. Two and one-half cents (.02½) per month per dues-paying member of the per capita forwarded to the International Union by Local

Unions shall be used as the Educational and Recreational Fund of the International Union, as provided in this Constitution.

Two cents (.02) of such per capita tax shall be used for educational purposes and one-half cent (.0½) shall be used for Recreational purposes.

Section 4. Each Local Union shall set up a Local Union Educational Committee as part of its organization. The duties of this Committee shall be to promote Educational, Recreational and Cultural activities in the Local Union.

Section 5. The Local Union shall set aside, in addition to the Educational per capita tax due the International Union, a separate fund of two and one-half cents (.02½) per month per dues-paying member to finance the Educational and Recreational activities of the Local Union. The prorating of this fund shall be in such manner as the Local Union may determine.

ARTICLE 26

Union Label

Section 1. The International Union shall have a union label and stamp.

Section 2. It shall be the duty of the International Secretary-Treasurer to copyright and protect said union label and stamp.

Section 3. It shall be the policy of the International Union and subordinate bodies to insist that all parts, stampings, tools, dies, machinery, fixtures, accessories and supplies used in the manufacture of articles under the jurisdiction of this International Union, bear the Union Label or Union Stamp of the International Union, or any other bona fide labor union.

Section 4. It shall be the duty of all representatives, business agents and union officials to insist that the above provisions be written into all contracts between employers and the International Union subject to approval of the International Executive Board.

Section 5. No manufacturer of products produced by workers under the jurisdiction of this International Union shall be permitted to use the union label or union stamp unless the plant is holding a contract approved by the International Executive Board, with the International Union.

Section 6. It shall be the duty of the Local Union Label Committee to see that the International Union label shall be molded, stamped or affixed to all parts manufactured, assembled or finished products where provided for.

Section 7. The above provisions shall in no case be used as a basis for the violation of existing agreements.

Section 8. All Local Unions shall have an appointed or elected Union Label Committee that must function.

Section 9. At all Conventions of the International Union a necessary qualification of delegates shall be the possession and wearing of at least three union-made garments.

Section 10. The International Executive Board shall set up a Union Label Committee from members of the International Union to coordinate the activities of Local Union Label Committees throughout the International Union. It shall be the duty of this committee to work in conjunction with the Education Department of the International Union and the Congress of Industrial Organizations' Union Label Committee.

ARTICLE 27

Official Publication

Section 1. There shall be published at least once a month by the International Union a publication designed to educate the membership and to acquaint the membership with the activities of this International Union. The title of said publication shall be "*United Automobile Worker*", or its successor designation, Official Publication of the International Union.

Section 2. The "*United Automobile Worker*" shall be under the supervision of the International Executive Board who shall select a Publication Committee consisting of the International President and two other members of the International Executive Board. The Publication Committee shall be directly responsible to the International Executive Board in carrying out the task of publishing the "*United Automobile Worker*." The Editor of the "*United Automobile Worker*" shall be appointed by the International President, subject to the approval of the International Executive Board.

Section 3. The International Secretary-Treasurer shall allocate out of each per capita tax, five cents (.05) for a special fund for the "*United Automobile Worker*."

Section 4. The subscription rate of the "*United Automobile Worker*" shall be sixty cents (.60) per annum, payable with dues as provided in Article 15, Section 4.

Section 5. This publication is to be sent through the United States Mail to each member in good standing.

Section 6. To non-members, the rate shall be one dollar (\$1.00) per annum, with postage additional for foreign subscribers.

Section 7. Price of single copies shall be five cents (.05).

Section 8. Local publications shall conform with the policies of the International Union.

ARTICLE 28

Charges and Trials of International Officers

Section 1. Charges against International Officers or International Executive Board Members may be filed in either of these manners:

- (a) Upon written affidavit filed by five or more Board Members with the International Secretary-Treasurer.
- (b) Upon written affidavit signed by a Local Union member and endorsed by his own Local Union and by at least ten additional Locals in the International Union, or in the case of charges against an International Executive Board Member, upon written affidavit signed by the Local Union member and endorsed by his own Local Union and a majority of the Local Unions within the region from which the International Executive Board Member is elected.

In case the charges to be filed are against the International Secretary-Treasurer they shall be filed with the International President who shall in that case alone perform the duties with reference to the trial procedure.

Section 2. Upon receipt of the charges the International Secretary-Treasurer shall immediately send a copy of the charges by receipted registered mail to the accused and copies to all International Executive Board Members, notifying the accused that he has fifteen days to prepare a defense and notifying the International Executive Board Members of a Special International Executive

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Board Meeting to be called ten days following the filing of the charges.

Section 3. Pending the trial, the International Officer or International Executive Board Member accused shall continue to function in his elected capacity unless a Special International Executive Board Meeting is convened and votes by two-thirds majority for his suspension as otherwise provided in this Constitution.

Section 4. The first order of business at the Special International Executive Board Meeting shall be the setting up of an International Union Trial Committee. This Committee shall be chosen from among the regular delegates attending the preceding International Union Convention. The names of all such regular delegates shall be copied from the Official Convention Roll Call. The names of all delegates shall be written on uniform sized slips of paper and deposited in a box by the Secretary-Treasurer, in the presence of the International Executive Board, and the box shall be sealed and thoroughly shaken. The International Secretary-Treasurer shall then open the container and the member of the International Executive Board elected for that purpose and blindfolded, shall draw the names of fifty (50) delegates, one by one. After these names are drawn they shall be read by the International Secretary-Treasurer in the presence of the International Executive Board and each name in succession shall be set opposite a number from one to fifty.

During the drawing of the names, the accused or his personal representative shall have the right to be present, as may the accuser or a representative of the accuser.

Section 5. Following the selection of the panel the accused and the accuser may strike ten names each from the panel of fifty and the International

Secretary-Treasurer shall be instructed in addition to strike the names of any International Employee, International Officers or International Executive Board Member who may be drawn.

After these challenges have been made the first twelve persons whose names remain on the list shall be notified to report to the International Office within five days to proceed with the trial. Local Unions shall also be notified when any of their members' names are drawn for service on the International Trial Committee.

Section 6. Such an order shall be mandatory upon any member of the union receiving this notice. Should he fail to appear, unless his absence is excused by a signed affidavit of illness or Local Union emergency, attested to by the Executive Board of his Local Union, such a member may be subject to charges in his Local Union, and to expulsion.

Upon his appearance at the International Office, each member of the Trial Committee thus notified shall produce affidavit attesting his membership in good standing in his Local Union, signed by the Financial Secretary of his Local Union.

In case one or more members of the Trial Committee thus notified shall fail to appear for the above reasons or fail to produce such certificate of membership in good standing, the next member of the panel, numbering down from one to fifty shall be notified to report.

Section 7. The International Trial Committee shall go into session immediately upon arrival of the full panel and shall hear the charges brought by the accuser and all the witnesses named for substantiation, and shall hear the defense of the accused and all his witnesses for substantiation. The Trial Committee shall decide its own rules

of procedure relating to the conduct of the trial and may elect its own Chairman and Secretary, providing that verbatim minutes of all evidence shall be reported by a court stenographer. The accused and the accuser shall have a right to be represented by counsel.

Section 8. The Trial Committee, upon completion of the hearing on the evidence and arguments, shall go into closed session to determine the verdict and penalty. A two-thirds majority vote shall be required to find the accused guilty. In case the accused is found guilty, the Trial Committee may by a majority vote reprimand the accused; or it may by a two-thirds majority vote, assess a fine not to exceed \$500.00, with automatic suspension, removal from office or expulsion in the event of the failure of the accused to pay the fine within a specified time; or it may by a two-thirds majority vote suspend or remove the accused from office, or suspend or expell him from membership in the International Union.

Section 9. In case a Trial Committee finds the accused innocent they may determine the honest or malicious intent of the accuser. If they find the accuser guilty of obvious malice in filing the charges they may assess a penalty against him in accordance with Section 8 of this Article.

Section 10. Charges against an International Officer or International Executive Board Member, concerning his own Local Union, shall not be filed according to Local Union trial procedure, but in accordance with the above provisions.

ARTICLE 29

Appeals

Section 1. All subordinate bodies of the International Union and members thereof shall be entitled to the right of appeal.

Section 2. If a subordinate body, or member thereof, wishes to appeal from any action, decision or penalty, he shall appeal to the International Executive Board, and if it is desired to appeal the decision of the International Executive Board, an appeal may be taken therefrom to the next International Convention. The decision of the Convention shall be final. In all cases, however, the decision of the lower tribunal must be complied with before the right to appeal can be accepted by the next tribunal in authority, and shall remain in effect until reversed or modified.

Section 3. Any member wishing to appeal from the action, decision or penalty of his subordinate body shall do so in writing within thirty (30) days after the aforesaid action, decision or penalty, and he must notify said subordinate body of his intention in writing. It shall then be the duty of the subordinate body to forward to the International Executive Board a complete statement of the matter in issue.

Section 4. Any subordinate body or member thereof wishing to appeal from any action, decision or penalty of the International Executive Board to the Convention of the International Union, must serve notice of appeal upon, and file a written statement of his grievance with the International Secretary-Treasurer, within sixty days after such decision is rendered.

Section 5. The International President may extend the time for filing any appeal if in his opinion justice will be served thereby.

Section 6. In no case shall a member or subordinate body appeal to a Civil Court for redress until he or it has exhausted his or its rights of appeal under the laws of this International Union. Any violation of this section shall be cause for summary suspension or expulsion, or for revoca-

tion of Charter, by a two-thirds vote of the International Executive Board.

ARTICLE 30

District Councils

Section 1. When a majority of Local Unions of this International Union within their geographical district, request the establishment of a District Council, such Local Union representatives shall be assembled by the Regional Directors of that area for the formation of such a Council.

Section 2. When such a District Council is established, it shall be mandatory for all Local Unions of this International Union to affiliate with the Council of their geographical district and obtain a charter from the International Union.

Section 3. The purpose of the District Council shall be to recommend to the Regional Director and the International Union, constructive measures for the welfare of Local Unions and their members. It shall discuss comparative wages, rates, agreements, methods of approach, organizational problems, National and State legislative programs and such other problems as may be of general interest to the Local Union membership.

Section 4. The District Council shall be composed of delegates elected from the Local Unions at the formation of the Council and each year thereafter on the basis of Convention procedure. To avoid unnecessary expense in District Councils, Local Unions may empower as many delegates as they desire to carry and vote the entire vote of the Local Union.

Section 5. Activities of the District Councils shall be financed by the payment of a per capita tax of not more than one (1) cent per member per month by each Local Union affiliated with the District Council.

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Section 6. The per capita tax may be used to assist in organizational work, prepare educational literature, lobby for legislative programs and promote the welfare of benefit to its affiliated Locals

Section 7. When a subordinate body has failed to report and pay the per capita tax to the District Council, the District Council Secretary-Treasurer shall report this fact to the International Secretary-Treasurer; the International Secretary-Treasurer shall notify the Subordinate Body President and Board of Trustees. Such subordinate body shall stand suspended until such delinquency is made good.

Section 8. The District Council shall draft its By-Laws in conformity with this Constitution and subject to the approval of the International Executive Board.

ARTICLE 31

Amalgamated Local Unions

Section 1. Any two or more manufacturing units who are not a part of an Amalgamated Local Union may petition the International Executive Board for the formation of an Amalgamated Local Union. Such petitions must be approved by the membership of the manufacturing units desiring an Amalgamated Local Union in a specially called membership meeting for that purpose. Upon receipt of such petitions the International Executive Board shall investigate the feasibility of an Amalgamated Local Union and if their decision is that an Amalgamated Local Union be set up, the Regional Director shall without delay set up an Amalgamated Local Union comprising the manufacturing units as determined by the International Executive Board.

Section 2. Any two or more manufacturing units of an Amalgamated Local Union may peti-

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tion the International Executive Board and urge them to set up a Joint Council in their Local Union. The International Executive Board shall without undue delay investigate the practicality of a Joint Council for that Local Union and if they determine that a Joint Council shall be set up, the Local Union shall without delay set up a Joint Council based on the following principles:

The Membership of the Local Union shall be guaranteed:

- (a) Proportional representation from each manufacturing unit, based on the dues dollar each manufacturing unit pays to the Local Union. In no case shall any manufacturing unit be entitled to less than two (2) representatives to the Joint Council.
- (b) The right to appeal from any decision of the Joint Council by referendum vote of the membership.
- (c) That each manufacturing unit will have unit autonomy on matters pertaining strictly to that unit.
- (d) That a percentage of every dues dollar which a manufacturing unit pays to the Local Union may be set aside as a fund for the use of that manufacturing unit for whatever purpose they so desire.

Section 3. Additional organized manufacturing units may be added to Amalgamated Local Unions, only upon approval of the International Executive Board and subject to the majority vote of the membership of the unit and the Joint Council or membership of the Amalgamated Local Union. Unorganized manufacturing units may be added to an Amalgamated Local Union upon the approval of the Regional Director.

Local Union Charters

Section 1. A Local Union may be formed by seven or more persons working within the jurisdiction of the International Union by applying to the International Secretary-Treasurer for a charter.

Section 2. The International Secretary-Treasurer shall furnish the applicants for a charter with an application blank, and when the same has been properly filled out and returned with \$15.00 charter fee, upon approval of the International Executive Board a charter shall be granted and a seal and initial supplies furnished.

Section 3. The charter fee for subordinate bodies shall be \$15.00, which shall entitle the Local Union to a charter, one membership receipt book, one Treasurer's receipt book, one Recording Secretary's minute book, fifteen constitutions, one roll call book and one gavel.

This charter and supplies shall remain the property of the International Union, to be used by the Local Union only as long as said Local Union and its members comply with the laws of the International Union.

Section 4. The charters to be issued to subordinate bodies shall be in the following form:

CHARTER

To All Whom These Presents Shall Come:
Know Ye, that the International Union, UNITED
AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IM-
PLEMENT WORKERS OF AMERICA, (UAW-CIO),
affiliated with the Congress of Industrial Organi-
zations, established for the purpose of effecting
a thorough organization of the Automotive In-
dustry, and composed of Local Unions and Mem-
bers in different sections of the country, doth,

upon proper application and under conditions herein provided hereby grant unto

and to their successors, this Charter for the establishment and future maintenance of a Local Union at

to be known as Local Union No.

of

Now, the conditions of this Charter are such:

That said Union forever and under any and all circumstances shall be subordinate to and comply with all the requirements of the Constitution, By-Laws and General Laws or other laws of the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO) as they may from time to time be altered or amended; That said Union shall, for all time, be guided and controlled by all acts and decisions of the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO) as they may from time to time be enacted; That should the Local Union above chartered take advantage of any powers, privileges or rights conferred under the laws as they may exist at any time, said action shall not prevent the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO) from recalling, amending, changing or abolishing any such powers, privileges or rights.

So long as the said Union adheres to these conditions, this Charter to remain in full force; but upon infraction thereof, the International

Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO) may revoke this Charter, thereby annulling all privileges secured hereunder.

In Witness Whereof, We have hereunto set our hands and affixed the Seal of the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO) this.....day of.....

.....

INTERNATIONAL EXECUTIVE BOARD

.....
International President.

.....
International Secretary-Treasurer.

Section 5. No Local Union, Women's Auxiliary, District Council or subordinate body shall disband as long as fifteen members or two Local Unions desire to retain the Charter, and then only upon the approval of the International Executive Board. In localities where there are two or more Local Unions and where the membership of any Local Union drops below fifteen members in good standing, such Local Union may be merged with another Local Union in that locality at the discretion of the International Executive Board. If a Local Union disbands, or if a Local Union goes out of existence by reason of cessation of production at the plant over which it has jurisdiction, all of the property and assets of the Local Union shall revert to and become the property and assets of the International Union.

Section 6. The above section shall not apply to the issuance of Charters covering plants under the jurisdiction of a previously chartered Amalgamated Local Union. In case the membership

of a manufacturing concern covered by the jurisdiction of an Amalgamated Local Union desires to withdraw from the Local Union it may express its desire by raising the question in a regularly called meeting at which time a date shall be set for a meeting to discuss and decide whether a vote should be taken on a separate charter. If such a meeting shall be called the membership shall be notified by mail of time, place and purpose. If at this meeting a majority of the members present vote in favor of holding an election to decide the issue the full membership of the plant shall be notified by mail of a vote to be held on the question of a separate charter, such voting to be by secret ballot in booths conveniently located to allow all members an opportunity to vote. In case a majority of the membership voting, favor a separate charter, the International Executive Board shall issue a charter. In case the vote fails to carry, the question of a separate charter shall not be discussed or voted on again for a period of one year. The cost of such election shall be borne equally by the Amalgamated Local Union and the Manufacturing unit involved.

ARTICLE 33

Duties of Subordinate Bodies

Section 1. It shall be mandatory for all Local Unions of the International Union, to affiliate with State or Provincial Industrial Union Councils.

It shall be the duty of all Local Unions to affiliate with CIO City or County bodies, wherever such bodies are established.

Section 2. All subordinate bodies shall submit any and all laws governing said subordinate bodies to the International Executive Board for ratification of same.

Section 3. Each Local Union shall hold a regular membership meeting at least once a month except an Amalgamated Local Union that is a delegate body, in which case the delegate body of the Amalgamated Local Union and each unit shall meet at least once a month. Amalgamated Local Unions with less than 20,000 members shall hold general membership meetings at least once every three months and Amalgamated Local Unions with 20,000 or more members shall hold general membership meetings at least once a year.

Section 4. Each subordinate body shall strive to attain the objectives set forth in this constitution; to maintain free relations with other organizations; to do all in its power to strengthen and promote the labor movement; to cooperate with Regional Board Members, International Representatives and help promote organizational activities.

ARTICLE 34

Local Union Seal and Buttons

Section 1. The International Union shall provide each Local Union with the official seal which shall be held in the custody of such Local Union officer or officers as each Local Union may decide and shall be used only on documents or communications for which its use has been specifically authorized by the Local Union.

Section 2. Any member who shall counterfeit, imitate or falsify the International Union dues receipts, insignia, seal, label or buttons, or knowingly use such imitations or counterfeits, shall be fined or expelled from this Union, as the circumstances may warrant after trial has been recorded the accused.

Section 3. The International Union shall provide uniform monthly dues buttons, at not more

than cost, of a different color for each month. It shall be mandatory for Local Unions using dues buttons to use only those buttons provided by the International Union, which shall be supplied by the International Secretary-Treasurer to the Financial Secretaries of the Local Unions upon request. Local Unions covered by Union Shop or check-off agreements may, upon approval of the International Executive Board, use an annual membership button, membership card or other suitable identification of membership in lieu of monthly dues buttons.

ARTICLE 35

Local Union Officers

Section 1. Each Local Union shall have the following Executive Officers: President, Vice President, or Vice Presidents, Recording Secretary, Financial Secretary, Treasurer, three Trustees, Sergeant-at-Arms and Guide. An Amalgamated Local Union where they may have more than one Vice President if they so desire.

Section 2. The election of Local Officers shall take place by secret ballot during February and March of each year and installation of officers shall take place at the next regular meeting following the election except as otherwise authorized by the International Executive Board. After the deadline on accepting nominations set by the Local Union election committee, no election of so-called "sticker" or "write-in" candidates shall be considered legal.

Section 3. These officers shall serve for the period of one year with the exception of the Trustees who shall serve for three years each. In the original election of Trustees, one shall be elected for one year, one for two years, and one for three years, and at each subsequent election as the vacancies appear each Trustee shall be elected for a three-year term.

Section 4. No member shall be eligible for election as an Executive Officer of the Local Union until he has been a member in continuous good standing in the Local Union for one year immediately prior to the nomination, except in the case of a newly organized Local Union.

Eligibility for election to other Local Union offices, committees, etc., shall be determined by the Local Union.

Section 5. The Executive Board of each Local Union shall consist of all the elected Union officers and such members at large as the Local may deem necessary.

Section 6. At the discretion of the Local Union the offices of Financial Secretary and Treasurer may be combined.

Section 7. The following rules shall be mandatory in all local union elections:

- 1) Every member in good standing shall be entitled to vote at all Union elections.
- 2) All elections shall be held under the supervision of a democratically elected Election Committee.
- 3) No candidate in any election shall be a member of the Election Committee having supervision over such election.
- 4) Any eligible candidate in any election shall have the right to submit his commonly known name to the Election Committee in writing as he desires it to appear on the ballot; and it shall so appear.
- 5) Each candidate shall have the right to have one challenger present when the votes are tabulated.

Section 8. Local Unions may elect a Business Agent if they so desire, provided he has been a member of the International Union in continuous good standing for a period of one year.

ARTICLE 36

Installation Ceremony

The installation ceremony may be performed by the Retiring President, Acting President or any regular commissioned International Representative.

The Installing Officer says:

"Give attention while I read to you the obligation:

"Do you hereby pledge on your honor to perform the duties of your respective offices as required by the Constitution of this Union; to bear true and faithful allegiance to the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO); to deliver all books, papers and other property of the Union that may be in your possession at the end of your term to your successor in office, and at all times conduct yourself as becomes a member of this Union?"

Officers respond, "I do."

The Installing Officer then says:

"Your duties are defined in the laws of the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO) and in your obligation should any emergency arise not provided for in these, you are expected to act according to the dictates of common sense, guided by an earnest desire to advance the best interest of the International Union and this Local Union. I trust you will all faithfully perform your duties, so that you may gain not only the esteem of your brothers, but what is of even more importance the approval of your conscience.

You will now assume your respective stations.

ARTICLE 37

Duties of Local Union Officers

Section 1—President.

It shall be the duty of the President to preside at all meetings of the Local Union, sign all orders on the Treasurer authorized by the Local Union, countersign all checks issued by the Treasurer against accounts of the Local Union when ordered by the Union, enforce the provisions of the Constitution, appoint committees not otherwise provided for. He shall be a member ex-officio of all committees.

Section 2—Vice-President.

The Vice-President shall assist the President in the discharge of his duties, and shall perform the duties of President in his absence, death, incapacity or resignation from office. He shall attend all sessions of the Local Union.

Section 3—Recording Secretary.

It shall be the duty of the Recording Secretary to keep a correct record of the proceedings of the Local Union, sign all orders on the Treasurer authorized by the Local Union, conduct the correspondence of the Local Union, furnish the International Secretary-Treasurer with the names and addresses of all of the officers of the Local Union, read all documents and correspondence to the Local Union and keep them on file for future reference. He shall comply with the provisions of Article 24, Section 2.

Section 4—Financial Secretary.

(a) It shall be the duty of the Financial Secretary to receive all dues, initiation fees, assessments, fines and other income of the Local Union and to give official receipts for same, as provided for in this Constitution. Financial Secretaries of Local Unions having a check-off arrangement will

be exempt from the above provision providing the company clearly shows on the check stub or pay envelope of each Union employee the amount of the deduction and the reason therefor.

(b) He shall write all checks drawn on the Local Union funds and report in writing every month at a regular meeting of the Local Union giving the amount of moneys received and paid out during the previous calendar month, divided as between the various income and expenditure classifications, and the remaining balances in the fund accounts of the Local Union.

(c) He shall deposit all collections either with the Treasurer, taking a receipt therefor, or in such bank as Local Union Trustees may direct, with advice to the Treasurer as to the amount so deposited.

(d) He shall by the 20th of each month send a report to the International Secretary-Treasurer on blanks furnished by the International Union, together with the correct amount of money due the International Union for the preceding month which begins on the first and ends with the last day of the month. He shall receive applications for membership and notify the candidates of their election or rejection. He shall assist the International Union in seeing that all members receive the official publication regularly when eligible, provide each member with an official receipt for all moneys paid and provide each member with a copy of the constitution and By-Laws. Union membership cards and/or dues buttons may be issued at the option of the Local Union.

(e) He shall keep a record of all members initiated, suspended, expelled or deceased, transfers in and out and reinstatements, during his term of office and notify the International Secretary-Treasurer of same, and perform such other duties as the By-Laws prescribe or the Local Union may direct. There shall be maintained by the Financial Secretary a complete record of all

ive members of the Local Union. This record
ll have the date of initiation, the date and
se of suspension or expulsion, the date of
statement, together with the date of death,
ne address and such other matters as may be
med necessary to keep a record of the con-
uous membership of a member of this Union.

f) He shall keep an inventory of all records
d property of the Union, the same to contain
en possible, date of purchase and amount paid
each article. He shall notify all members in
ears of the amount of their indebtedness and
n over his books to the trustees for audit and
roval when called upon to do so. He shall,
the demand of the International Secretary-
reasurer produce his books for examination and
lit, and shall comply with the provisions of this
stitution.

g) Should it be proven that any Local Union
Financial Secretary has wilfully and intentionally
led to report monthly the full membership of
Local to the International Secretary-Treasurer
to send in the full amount of per capita tax
the same number of members that have paid
es to the Local Union, together with full
ount of assessments due the International
ion, the Local Union may be suspended from
privileges and benefits until the deficiency is
de good and the officer responsible for such
lure shall not be allowed to again hold office
the organization for a period of two years.

Section 5—Treasurer.

The Treasurer shall give a receipt for all
neys received from the Financial Secretary.
e moneys received must be deposited in such
nk as the Local Union Trustees may direct for
e several funds provided for in this Constitu-
n and such other funds as the Local Union
y set up in the name and number of the Local
ion. He shall sign all checks which must be

countersigned by the President. He shall report in writing every month at a regular meeting of the Local Union the total receipts and total expenditures for the Local Union for the previous calendar month and the amount of money still on deposit. He shall deliver to his successor all moneys and other property of the Local Union. He shall on demand of the International Union or Trustees of the Local Union produce his books for examination and audit.

Section 6—Trustees.

The Trustees shall have general supervision over all funds and property of the Local Union. They shall audit or cause to be audited by a Certified Public Accountant selected by the Local Union Executive Board, the records of the Financial Officers of the Local Union quarterly as provided herein, using duplicate forms provided by the International Union, a copy of which shall be forwarded to the International Secretary-Treasurer immediately thereafter. It shall also be their duty to see that the Financial Officers of the Local Union are bonded in conformity with the laws of the International Union. The Trustees shall see that all funds shall be deposited in a bank subject to an order signed by the President and Treasurer. In the event the books are not received for audit within fifteen days after the end of each quarter the Chairman of the Trustees shall make a report to the next meeting of the Local Union for action.

Section 7—Sergeant-At-Arms.

It shall be the duty of the Sergeant-At-Arms to introduce all new members and visitors and assist the President in preserving order when called upon to do so. He shall also take charge of all property of this Union not otherwise provided for, and perform such other duties as may be assigned to him from time to time.

Section 8—Guide.

It shall be the duty of the Guide to maintain order, inspect the membership receipts, satisfy himself that all present are entitled to remain at the meeting of the Local Union and perform all other duties as are usual to the office.

ARTICLE 38

Duties of Local Union Members

Section 1. It shall be the duty of each member to conscientiously seek to understand and exemplify by practice the intent and purpose of the obligation as a member of this International Union.

Section 2. It shall be the duty of each member to render aid and assistance to brother or sister members in cases of illness, death or distress, and in every way acquit himself as a loyal and devoted member of the International Union.

ARTICLE 39

Opening and Closing Ceremonies

I now declare this meeting of Local Union _____ of the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO) open the transaction of such business as may properly come before it."

The following order of Business is suggested, it may be altered to suit the requirements of the Local Union:

1. Roll call of officers.
2. Reading of the minutes of the previous meeting.
3. Applications for membership.
4. Voting on applications.
5. Initiation of Candidates.

6. Report of Financial Secretary and/or Treasurer.

7. Reports of officers, committees and delegates.

8. Communications and bills.

9. Unfinished Business.

10. Good and Welfare.

11. Does any one know of a member out of work or in distress?

12. New Business.

13. Closing.

(All questions of parliamentary nature shall be decided by Roberts Rules of Order.)

ARTICLE 40

Initiation Ceremony Suggestions

The President shall say to the Guide:

"You will now place the candidate before me for the obligation." The Guide advances with the candidate and places him in front of the President's station. All newly elected members before being admitted to full membership shall subscribe to the following obligation:

"I, _____
pledge my honor to faithfully observe the Constitution and laws of this Union and the Constitution of the United States (or the Dominion of Canada as the case may be); to comply with all the rules and regulations for the government thereof; not to divulge or make known any private proceedings of this Union; to faithfully perform all the duties assigned to me to the best of my ability and skill; to so conduct myself at all times as not to bring reproach upon my Union, and at all times to bear true and faithful allegiance to the International Union, UNITED STATES AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO)."

ARTICLE 41

Local Union Committees

Section 1. The Local Union shall have the following standing Committees: Executive Board, Constitution and By-Laws, Union Label, Education, Relief, Legislative and Political Action and such other committees as they deem necessary. The Executive Board of each Local Union shall be elected; all other committees shall be appointed or elected, subject to the discretion of the Local or shop organization in the case of an Amalgamated Local.

Section 2. The Executive Board shall be empowered to represent Local Unions between meetings of the Union when urgent business requires prompt and decisive action. In no case, however, shall the Board transact any business that may affect the vital interests of the Union until the approval of the membership is secured, or of the shop organization in the case of an Amalgamated Local.

Section 3. All Local Union Officers, committees, stewards and other members handling funds or other property of the Union shall, at the completion of their duties, turn over all papers, documents, funds and/or other union property to the properly constituted Local Union Officers.

ARTICLE 42

Shop Stewards and Shop Committeemen

Section 1. The Bargaining Committee may, but does not necessarily have to consist of the members of the Executive Board of the Local.

Section 3. All Shop Stewards (or shop committeemen) shall be democratically elected and they may be recalled by a two-thirds majority vote of the members electing them, at any meet-

ing called for that purpose, with due notification of such meeting given the members involved.

Section 3. All Local Union By-Laws shall contain specific provisions on the shop steward system as applicable to their shop or plant, the general structure of which is outlined in an issue of the Educational Department of this International Union, dealing with Shop Stewards.

ARTICLE 43

Local Union Finance and Expenditures

Section 1. The funds of each Local Union shall be used to defray all necessary expenses which must be approved by the Local Union in regular meeting.

Section 2. Assessments may be levied by a Local Union in case of emergency or when income from dues and initiation fees is inadequate to finance the necessary expenses of the Local Union. All assessments shall be subject to the approval of the Regional Director and such approval must be obtained before the assessment is levied.

Section 3. Assessments shall be levied only after ratification by a two-thirds vote of the membership present at a Local Union meeting, due notice of which has been given to the membership at least seven days prior to the date of said meeting.

Section 4. All appeals by Local Unions to other Local Unions for funds must be approved by the respective Regional Director before they shall be recognized. Such appeals must be promptly approved or disapproved.

ARTICLE 44

Local Union Audits

Section 1. The fiscal year of the Local Union shall conform with the provision in this Constitution dealing with the fiscal year of the International Union.

Section 2. It shall be the duty of the Trustees of each Local Union as provided for in Article Section 6, to audit or cause to be audited by a Certified Public Accountant the books and financial affairs of their Local Union quarterly on the forms supplied by the International Union, and this quarterly report shall be made to the Local Union and to the International Secretary-Treasurer of the International Union.

Section 3. Should inaccuracies or discrepancies appear in auditing report of a Local Union the International Secretary-Treasurer, upon the approval of the International President or the International Executive Board, shall have the authority to designate a representative to take charge of all financial books, records and accounts of said Local Union and may employ a Certified Public Accountant to audit same.

Section 4. The report and findings of the representative or the Certified Public Accountant shall be filed with the President of the Local Union and the International Secretary-Treasurer of the International Union.

Section 5. Should an audit reveal a misappropriation of funds, the officers or members responsible shall be immediately suspended from office and upon having been proved guilty shall be prosecuted under their bond and shall be subject to such final penalty as may be determined

by their Local Union. Such officers or members shall not again be eligible to hold any union office.

ARTICLE 45

Fraud in Local Union Elections

Any member convicted of misrepresenting returns, altering, mutilating, or destroying deposited ballots, voting fraudulently or of intimidating others by threats or otherwise interfering with a member in the exercise of his or her right to cast his or her ballot in Local Union elections and strike balloting, shall be punished in accordance with the Trial Procedure outlined in this Constitution. In no case shall the penalty be less than a fine of \$10.00 and the member so convicted shall be disqualified for either elective or appointive office within the jurisdiction of the International Union for a period of not less than two years or more than five years.

All ballots may be destroyed ninety (90) days after the close of the election and a notarized statement by the Election Committee shall be made with regard to the election results and the disposition of the ballots.

ARTICLE 46

Trials of Members

Section 1. All charges against a member of the Union with the violation of any of the provisions of this Constitution, or with conduct unbecoming a member of the Union, must be made in writing and signed by the member making the charges.

Section 2. Charges must be submitted within sixty (60) days of the time the complainant becomes aware of the alleged offense.

Section 3. A member against whom charges have been filed shall be notified of such charges by receipted registered mail within seven (7) days after the charges have been submitted to the Local Union or, in the case of an Amalgamated Local, to the Shop Organization of which he is a member.

A member placed on trial shall be permitted representation by legal counsel of his own choice; such counsel, however, shall be required to abide by the Trial Procedure as established by the Trial Board and as outlined in this Constitution.

Section 4. A member against whom charges have been filed may be suspended from office or membership in his Local Union or Shop Organization, as the case may be, pending trial, by a two-thirds vote of all members present at such Local Union or Shop Organization meeting.

Section 5. The trial of an accused member shall be held not less than fifteen (15) days nor more than thirty (30) days from the date of his receipt of such notification of trial.

Section 6. The accused member shall be tried by a Trial Committee consisting of at least seven (7) members who shall be elected by the Local Union, or, in the case of an Amalgamated Local, by the Shop Organization. An officer of an Amalgamated Local Union if charged with a violation of the Amalgamated Local Union By-Laws or International Constitution or if charged with being derelict in performing his duties as a Local Union Officer shall be tried by a Trial Committee elected either by the delegate body of such Amalgamated Local Union, where such delegate body exists, or by a Trial Committee established

by the general membership meeting of such Amalgamated Local Union, where no delegate body exists.

The Trial Committee, upon completion of the hearing on the evidence and arguments, shall go into closed session to determine the verdict and penalty. A two-thirds majority vote shall be required to find the accused guilty. In case, the accused is found guilty, the Trial Committee may by a majority vote reprimand the accused; or it may by a two-thirds majority vote assess a fine not to exceed one hundred (\$100) dollars, with automatic suspension, removal from office or expulsion in the event of the failure of the accused to pay the fine within a specified time; or it may by a two-thirds majority vote suspend or remove the accused from office or suspend or expel him from membership in the International Union.

Section 7. The Trial Committee shall thereupon report its verdict and judgment to the body which elected them, and such verdict and judgment shall become effective only upon approval by a two-thirds vote of all members present at the local union meeting, or the shop organization meeting as the case may be. The Local Union meeting or the Shop meeting may by a two-thirds vote modify the verdict or order a new trial. A member found guilty by his shop organization may appeal in writing to the next meeting of his Amalgamated Local Union, which shall thereupon act as provided in this section.

In shop organizations of Amalgamated Local Unions an appeal from the verdict of the Trial Committee shall first be carried to the Amalgamated Local Union's delegate body, where such exists or the general membership meeting, where

o delegate body exists. An appeal from the decision of the Amalgamated Local Union shall be carried to the International Executive Board.

Section 8. In the event that the penalty is suspension, the suspended member shall be required to pay all dues and assessments during the period of suspension. Suspended members shall not be entitled to "Out-of-Work" receipts.

Section 9. In case the Trial Committee finds the accused obviously innocent they may determine the honest or malicious intent of the accuser. If they find the accuser guilty of obvious malice in filing the charges, they may assess a penalty against him in accordance with Section 6 of this article; provided, however, that such a penalty shall be limited to the following: A fine not to exceed one hundred (\$100) dollars, with automatic suspension in the event of the failure of the accused to pay the fine within a specified time; or suspension from membership for a period not to exceed three (3) months. Such verdict and penalty in relation to the accuser shall become effective only upon approval by a two-thirds vote of all members present at the local Union meeting, or the Shop Organization meeting as the case may be. The local union meeting or the shop organization meeting may, by a two-thirds vote modify the verdict or order a new trial of the accuser.

Section 10. Any higher body to which an appeal from the decision of the Trial Committee is made shall have the authority not only to accept or reject the verdict, but may modify such a verdict or order a new trial.

Section 11. Where a member against whom charges have been filed has been duly suspended

in compliance with the provisions of Article 45, Section 4 of the Constitution of the International Union and has been found guilty by the Trial Committee, he shall have the right to attend the meeting of the Shop Organization or of the Local Union, as the case may be, in which any verdict and judgment is presented for approval, and shall be afforded full opportunity to present to the meeting his position on all matters bearing upon his trial, verdict and judgment.

ARTICLE 47

Women's Auxiliaries

Section 1. Where there is a strong desire on the part of the wives, mothers, sisters and daughters of the members of any Local Union of the International Union to elevate the conditions, maintain and protect the interests of the UAW-CIO, a charter for a Women's Auxiliary shall be granted when application is made upon a blank furnished by the International Secretary-Treasurer of this International Union.

Section 2. The charter fee shall be \$10.00 for charter and initial supplies.

Section 3. Dues to maintain such Auxiliary shall not be more than 50 cents per month. No per capita tax shall be charged by this International Union from dues so collected.

Section 4. The Auxiliary shall establish such laws as do not conflict with the By-Laws of their Local Union and this Constitution and shall submit same to the International Executive Board for ratification.

Section 5. So long as the Auxiliary adheres to the provisions of this Constitution and the Local By-Laws and does not adopt a policy con-

ary to that of the International or Local Union and adheres to the conditions of its charter, it shall remain in full force, but upon infraction thereof or upon request of the Local Union, the International Executive Board may revoke the charter, thereby annulling all privileges secured hereunder.

Section 6. A maximum of five delegates elected by the International Conference of Women's Auxiliaries shall be seated in the National Convention of the International Union, with voice but no vote; said International Conference of Women's Auxiliaries to be held at the same time and place as the National Convention of the International Union. The International Conference of the Women's Auxiliaries shall elect seven (7) members to serve as a Coordinating Committee. It shall be the duty of this Coordinating Committee to coordinate the activities of the Women's Auxiliaries and to work under the direct supervision of the Director of Women's Auxiliaries.

Section 7. Representation to the International Conference of Women's Auxiliaries shall be on the following basis: Each Women's Auxiliary shall be entitled to elect one delegate for the charter and one delegate for each fifty dues-paying members or fraction thereof.

No credential for the Conference shall be issued to Local Auxiliary or District Council that is not chartered by the International Union.

Section 8. The President of the International Union shall appoint the director to direct, coordinate and supervise the activities of the Women's Auxiliaries.

Section 9. It is the duty of the Women's Aux-

iliary to educate the wives, mothers, sisters and daughters of the automotive workers to the principles and ideals of trade unionism; to adhere to the principles and policies of their Local Union and the International Union; to assist their Local Unions in time of need and during labor disputes; to assist Local Unions in social affairs when called upon by their respective Local Union; to provide educational and cultural activities for the children of the automotive workers. It shall be the duty of the Local Unions to assist in the formation of Local Women's Auxiliaries; the Regional Director shall assist the Director of Women's Auxiliaries in their respective regions. The Women's Auxiliaries shall not campaign for or against candidates seeking office in Local Unions. The Women's Auxiliaries shall not interfere with the affairs of the Local Union unless officially called upon by their Local Union. Each respective Local Union shall select a Committee of not more than three (3) to assist the National and Regional Directors in supervising and formulating policies for their respective Auxiliaries.

Section 10. The charter to be issued to Women's Auxiliaries shall be in the following form:

**CHARTER
WOMEN'S AUXILIARY
UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA,
(UAW-CIO)**

To All Whom These Presents Shall Come:

Know Ye, that the Women's Auxiliary of the International Union, UNITED AUTOMOBILE, AIR-

FT AND AGRICULTURAL IMPLEMENT WORKERS
 AMERICA, (UAW-CIO), affiliated with the
 gress of Industrial Organizations, established
 the purpose of effecting thorough organiza-
 of all the Wives, Mothers, Sisters and
 ghters of Union Members who are directly
 er the jurisdiction of this International Union,
 , upon proper application and under condi-
 s herein provided hereby grant unto

to their successors, this charter, for the
 blishment and future maintenance of a
 nen's Auxiliary at

e known as Auxiliary No.....of

..... Now, the conditions
 his charter are such that said Auxiliary for-
 and under any and all circumstances shall
 subordinate to and comply with all the re-
 ements of the Constitution, By-Laws or other
 s of the International Union as they may from
 e to time be altered or amended; That said
 iliary shall, for all time, be guided and con-
 led by all acts and decisions of the Inter-
 onal Union as they may from time to time
 enacted; That should the Auxiliary above
 rtered take advantage of any powers, privi-
 s or rights conferred under the laws as they
 exist at any time, said action shall not pre-
 t the International Union from recalling,
 ending, changing or abolishing any such
 ers, privileges or rights.

o long as the said Auxiliary adheres to these
 ditions, the charter to remain in full force;

but upon infraction thereof, the International Union may revoke this charter, thereby annulling all privileges secured hereunder.

In Witness, Whereof, We have hereunto set our hands and affixed the seal of the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,

(UAW-CIO) this.....day of.....

19.....

.....
International President.

.....
International Secretary-Treasurer.

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CONSTITUTION
of
Congress
of
Industrial
Organizations



1943 .

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CONSTITUTION
of
Congress of
Industrial Organizations

1943



PRINTED IN U. S. A.

PREAMBLE

The Committee for Industrial Organization formed in November, 1935, presented a program to the unorganized workers of this country. In less than three years a magnificent record of achievement and overwhelming mass support established the Committee for Industrial Organization as the most powerful and progressive labor force in this country. Active organizing campaigns in the mass production and basic industries have brought into being unions with millions of members in unorganized industries.

A new freedom has been brought by the Committee for Industrial Organization to American workers and it has forged the instrumentality whereby labor will achieve and extend industrial and political democracy.

For the purpose of providing a permanent basis for the continued achievement and success on behalf of the workers of America, this constitution and the principles embraced therein have been adopted.

CONSTITUTION

ARTICLE I.

Name.

This organization shall be known as the "Congress of Industrial Organizations" (CIO).

ARTICLE II.

Objects.

The objects of the organization are:
First. To bring about the effective organization of the working men and women of America regardless of race, creed, color, or nationality, and to unite them for common action into labor unions for their mutual aid and protection.

Second. To extend the benefits of collective bargaining and to secure for the workers means to establish peaceful relations with their employers, by forming labor unions capable of dealing with modern aggregates of industry and finance.

Third. To maintain determined adherence to obligations and responsibilities under collective bargaining and wage agreements.

Fourth. To secure legislation safeguarding the economic security and social welfare of the workers of America, to protect and extend our democratic institutions and civil rights and liberties, and thus to perpetuate the cherished traditions of our democracy.

ARTICLE III.

Affiliates.

Section 1. The Organization shall be composed of affiliated national and international unions, organizing committees, local industrial unions and industrial union councils.

Sec. 2. Certificates of affiliation shall be issued to national and international unions and organizing committees by the Executive Board.

Sec. 3. Certificates of affiliation shall be issued to local industrial unions by the Executive Board. The Executive Board shall issue rules gov-

erning the conduct, activities, affairs, and the suspension and expulsion of local industrial unions. It shall be the duty of the Executive Board to combine local industrial unions into national or international unions or organizing committees. Any local industrial union or group of local industrial unions may request the Executive Board to authorize such combination. The decision of the Executive Board may be appealed to the convention, provided, however, that pending the appeal the decision shall remain in full force and effect.

Sec. 4. Certificates of affiliation shall be issued to industrial union councils by the Executive Board. Industrial Union Councils shall be organized upon a city, state or other regional basis as may be deemed advisable by the Executive Board and shall be composed of the locals of national unions, international unions and organizing committees, and local industrial unions and local industrial union councils within the territorial limits of such council. It shall be the

duty of national and international unions and organizing committees to direct their locals to affiliate with the proper industrial union councils. It shall be the duty of all local industrial unions and local industrial union councils to affiliate with the proper industrial union councils. The Executive Board shall issue rules governing the conduct, activities, affairs, and the suspension and expulsion of industrial union councils. The decision of the Executive Board may be appealed to the convention, provided, however, that pending the appeal the decision shall remain in full force and effect.

Sec. 5. The number of members in each national or international union, organizing committee, and local industrial union for any purpose under the constitution shall be the number of members for which per capita dues have been paid and the number of members for which exoneration has been granted by the Executive Board, pursuant to the constitution. It shall

be the duty of each affiliate to furnish reports to the Organization showing its membership.

Sec. 6. National or international unions and organizing committees may not be suspended or expelled except upon a two-thirds vote at the convention. This provision may not be amended except by a two-thirds vote at the convention.

ARTICLE IV.

Officers and Executive Board.

Section 1. The officers shall consist of a president, nine vice presidents and a secretary-treasurer. Each officer shall be a member of an affiliate, shall be elected by a majority of the votes cast at each regular convention, shall serve for the term of one year and shall assume office immediately upon election. In the event that more than two candidates are nominated for any one of the foregoing offices, and no one candidate receives a majority of the votes cast, all except the two candidates receiving the highest

votes shall be eliminated from the list of candidates, and a second vote taken.

Sec. 2. In the event of a vacancy in the office of the President, Vice President or Secretary-Treasurer by death, resignation or otherwise, the Executive Board by majority vote of all its members shall determine the successor, who shall serve the unexpired term, or until a successor for the unexpired term is chosen at a special convention, which may be called for that purpose. In the event of such a vacancy in the office of the President, the Secretary-Treasurer shall within ten days from the date of the vacancy call a special meeting of the Executive Board upon ten days' notice for the purpose of determining the successor.

Sec. 3. The convention shall elect the Executive Board which shall be composed of one member from each affiliated national and international union and organizing committee. Each such affiliate shall nominate one of its duly qualified officers for such membership to the Executive Board.

The President, Vice Presidents and Secretary-Treasurer shall be members of the Executive Board by virtue of their office.

Sec. 4. In the event of a vacancy in the membership of the Executive Board other than the officers, due to termination of office in the affiliate which nominated the member, or to death or resignation or otherwise, the Executive Board shall determine the successor who shall serve the unexpired term. The affiliate shall nominate one of its duly qualified officers for such successor.

Sec. 5. National headquarters shall be maintained at Washington, D. C.

ARTICLE V.

The Duties of the Officers.

President.

Section 1. The President shall preside over the convention and meetings of the Executive Board, exercise supervision of the affairs of the Organization, and function as the chief executive officer.

Sec. 2. The President shall interpret the meaning of the Constitution and his interpretation shall be subject to review by the Executive Board. Between sessions of the Executive Board he shall have full power to direct the affairs of the Organization, and his acts shall be reported to the Executive Board for its approval.

Sec. 3. The President shall have authority, subject to the approval of the Executive Board, to appoint, direct, suspend or remove, such organizers, representatives, agents and employees as he may deem necessary.

Sec. 4. The President shall make full reports of the administration of his office and of the affairs of the Organization to the convention.

Vice Presidents

Sec. 5. The Vice Presidents shall assist the President in the performance of his duties. Each Vice President shall carry out such special assignments as may be necessary in the judgment of the President to advance the work of the organization.

Secretary-Treasurer.

Sec. 6. The Secretary-Treasurer shall cause to be recorded the proceedings of all conventions and all sessions of the Executive Board. He shall have charge of and preserve the books and records, files, documents and effects of the Organization. He shall provide for a semi-annual audit of the books and financial records of the Organization which shall be reported to the Executive Board. He shall be bonded for the security of the Organization's funds and for the faithful performance of his duties in an amount to be determined by the Executive Board.

Sec. 7. The Secretary-Treasurer shall perform such other duties as may be assigned to him by the President or the Executive Board. The salary of the Secretary-Treasurer shall be fixed by the Executive Board.

ARTICLE VI.

Duties of the Executive Board.

Section 1. The Executive Board shall enforce the constitution and

carry out the instructions of the conventions, and between conventions shall have power to direct the affairs of the Organization.

Sec. 2. The Executive Board may establish bureaus and departments and create such committees as may be necessary to the affairs of the Organization.

Sec. 3. The Executive Board shall make the necessary arrangements for the maintenance of financial books and records, the receipt of all funds due the Organization, the deposit, investment, holding and disbursement of such funds. The Executive Board may appoint such employees as may be necessary for these purposes. Real estate necessary to the affairs of the Organization may be acquired, held, leased, mortgaged and disposed of by the Executive Board in the names of the Officers, and their successors in office, as trustees for the Organization.

Sec. 4. The Executive Board members shall attend all regular and spe-

cial meetings and shall perform such duties as may be assigned to them.

Sec. 5. The Executive Board shall hold at least two regular meetings each year. Special meetings of the Board shall be convened by the President when necessary or when requested by a majority of the members of the Executive Board. A quorum of the Executive Board shall be a majority of the members. Questions coming before the Executive Board shall be decided by a majority vote of its members present at a quorum, except as otherwise provided in the Constitution. Any member may demand a roll call vote on any question, and in such event, each Executive Board member shall cast as many votes as there are members of his affiliate. The number of members of each affiliate for such purpose shall be determined as of the month preceding the month in which the meeting is held. Where a roll call vote is taken, the officers shall have no vote except the President, who shall cast the deciding vote in the case of a tie.

Sec. 6. Any dispute between two or more affiliates may be submitted to the Executive Board which shall make such recommendations to the parties in dispute as it shall deem advisable and report to the convention.

Sec. 7. The Executive Board shall have the power to file charges and conduct ~~hearings~~ on such charges against any officer of the Organization or other member of the Executive Board, on the ground that such person is guilty of malfeasance or maladministration, and to make a report to the convention recommending appropriate action. The Executive Board must serve such officer with a copy of the written charges a reasonable time before the hearing.

Sec. 8. The Executive Board shall have the power to investigate any situation involving an affiliate on the ground that such affiliate is conducting its affairs and activities contrary to the provisions of the Constitution, and to make recommendations to the affiliate involved and to make a report to the convention.

Sec. 9. The Executive Board shall provide for the regular audit of the books and accounts of the Organization.

Sec. 10. The Executive Board shall report its actions, decisions and management of the affairs of the Organization to the convention.

Sec. 11. The members of the Executive Board shall be paid all legitimate expenses incurred in performing their duties as members of the Executive Board.

Sec. 12. The Executive Board shall have the power to adopt such rules, not inconsistent with the Constitution, as it may deem necessary to carry out its duties and powers.

ARTICLE VII.

Convention.

Section 1. The convention shall be the supreme authority of the Organization and except as otherwise provided in the Constitution, its decisions shall be by a majority vote.

Sec. 2. A convention shall be held each year during the months of October or November at a time and place designated by the Executive Board. The Executive Board shall give at least 30 days' notice of the time and place which it so designates. Special conventions may be called upon 30 days' notice by the Executive Board.

Sec. 3. The Call for a special convention must include a statement of the particular subject or subjects to be considered at the convention and no other business shall be transacted at such convention. A special convention shall be governed by the provisions for regular conventions.

Sec. 4. A majority of the delegates seated shall constitute a quorum.

Sec. 5. Each national and international union and organizing committee and each local industrial union shall be entitled to one vote for each member. Each industrial union council shall be entitled to one vote.

Sec. 6. Each national or international union and organizing committee shall be entitled to the number of

delegates indicated in the following scale:

Up to 5,000 membership, 2 delegates
Over 5,000 membership, 3 delegates
Over 10,000 membership, 4 delegates
Over 25,000 membership, 5 delegates
Over 50,000 membership, 6 delegates
Over 75,000 membership, 7 delegates
100,000 membership, 8 delegates for the
first 100,000 members and one additional
delegate for each additional
50,000 or majority fraction thereof.

Each local industrial union and industrial union council shall be entitled to one delegate. Local industrial unions may combine with other local industrial unions in a reasonable distance of one another and elect delegates to represent them.

Sec. 7. Any affiliate which, at the opening date of the convention, is in arrears to the Organization for per capita tax for two months or more shall not be entitled to representation to the convention.

Sec. 8. The number of members of each national and international union, organizing committee and local indus-

trial union for the purpose of the convention shall be determined as of the month preceding the month of the opening date of the convention. The Secretary shall submit to the convention a printed list showing the number of votes and delegates to which each affiliate is entitled.

Sec. 9. Questions may be decided by a division or show of hands. A roll call may be demanded by the delegates representing thirty (30) per cent or more of the total numbers of votes at the convention.

Sec. 10. Not less than 30 days prior to the opening of the convention, the Secretary shall furnish each affiliate with credential blanks in duplicate, which must be attested as required on the blanks. The duplicate shall be retained by the delegate, and the original sent to the Secretary, and no credentials shall be accepted later than ten days prior to the opening date of the convention.

Sec. 11. Prior to the opening date of the convention, the Executive Board shall meet and constitute itself

or a subcommittee as the Credentials Committee for the convention. Appeals from its decisions shall lie to the floor of the convention. The convention shall not be constituted for business until after the Credentials Committee shall have examined and reported on credentials of all delegates present at the scheduled time on the opening date of the convention.

Sec. 12. All members of the Executive Board who are not elected as delegates shall be ex-officio delegates to the convention with all the rights and privileges of elected delegates, but without vote.

Sec. 13. All resolutions, appeals, and constitutional amendments to be considered by the convention shall be sent not less than ten days prior to the the opening date of the convention to the Secretary, who shall sort and distribute them among the chairmen of appropriate committees.

Sec. 14. The President shall appoint, prior to the opening date of the convention and subject to the approval of the convention, such com-

mittees as are necessary to conduct the affairs of the convention. Such committees shall meet before the opening date of the convention and shall proceed to consider all resolutions, appeals, reports, and constitutional amendments submitted to the convention.

ARTICLE VIII.

Revenue.

Section 1. Each national and international union and organizing committee shall pay on or before the 15th of each month, for the preceding month, a per capita tax of five cents per member per month.

Sec. 2. Each local industrial union shall pay on the 15th of each month, for the preceding month, a per capita tax of fifty cents per member per month. The local industrial unions shall also pay to the Organization one-half of the initiation fee received by such local industrial union from its members, which payment to the Organization shall in no case be less than \$1 per member.

Sec. 3. The Executive Board may exonerate any national and international union, organizing committee and local industrial union from the payment of per capita tax due to the Organization for any month for the members in good standing of such affiliate who ~~are~~ unemployed due to strike, lock-out or other involuntary cause.

Sec. 4. Each affiliate, upon the issuance of a certificate of affiliation, shall pay to the Organization the sum of \$25.

Sec. 5. Each industrial union council shall pay to the Organization an annual fee of \$25.

ARTICLE IX.

This constitution, except as otherwise provided, may be amended by a majority vote at the convention.

ARTICLE X.

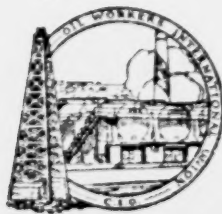
This constitution shall become effective immediately upon its adoption.

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CONSTITUTION
AND
BY-LAWS

— of the —

OIL WORKERS
INTERNATIONAL
UNION
CIO

1943 - 1944



AS ADOPTED BY THE FOURTEENTH CONVENTION HELD
AT FORT WORTH, TEXAS

August 9-14, 1943, Inclusive

**NATIONAL HEADQUARTERS OFFICE
OIL WORKERS INTERNATIONAL UNION
C. I. O.**

Century Bldg., 108 W. 8th St.

Fort Worth 2, Texas



**NATIONAL HEADQUARTERS OFFICE
OIL WORKERS ORGANIZING CAMPAIGN**

512 Insurance Bldg.

Fort Worth 2, Texas

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PREAMBLE

Believing it to be the natural right of those who toil, that they shall enjoy to the fullest extent the wealth created by their labor, realizing that it is impossible to obtain the full reward of labor, except by united action and through organization founded upon sound principles along economic, co-operative and industrial lines, through which the natural resources and means of production and distribution can best be controlled, we hereby pledge ourselves to labor unitedly in behalf of the principles herein set forth:

ARTICLE I.

Section 1. This organization shall be known as the Oil Workers International Union and shall include all persons working in the production, transportation, refining, natural gas and marketing of petroleum products and allied industries peculiar to the Oil Industry located in the United States, Canada and Mexico.

Sec. 2. The mandates of the International Union must be obeyed at all times and in it alone is vested the power to establish local unions and to regulate and determine all matters for their guidance, while to the latter is conceded the right to make all necessary laws for local government which do not conflict with the law of the International Union.

Objects

Sec. 3. Believing that it is not only the right but the duty of all workers to organize into a Union for the purpose of collective bargaining and other mutual benefits, the Oil Workers International Union hereby extends a hearty and most earnest invitation to all workers engaged in the natural gas and petroleum industries to unite with it. It shall be the object of this organization to work for the reduction of

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hours of daily toil, the establishment of equitable conditions, and to adjust and establish a high standard of conditions and commensurate annual wage, thereby assuring to all workers in the industry just compensation and time to share in the benefits flowing from organization. Charters may be issued to seven or more bona fide workers engaged in production, transportation and refining, natural gas and marketing of petroleum products and allied industries peculiar to the oil industry, and shall not be surrendered while seven members desire to retain same. No surrendered ~~charter~~ shall be accepted by the International Secretary-Treasurer unless recommended by the International Executive Council.

Sec. 4. No person shall be eligible to membership in this organization, who is not employed directly or indirectly as a bona fide worker within the natural gas, petroleum or allied industries peculiar to the oil industry.

Sec. 5. No person shall be granted membership in this organization who is opposed to the teachings and principles of the American Labor Movement, and proof of such opposition shall be good and sufficient cause for expulsion from this organization.

Any member accepting membership in the Communist or Fascist Organizations shall be expelled from the Oil Workers International Union, upon proof of such affiliation and shall be permanently barred from holding office in this Union, and no members of such organizations shall be permitted to have membership in this Union.

Any member accepting office in a dual organization as determined by the International Executive Council or by convention, shall be expelled from the Oil Workers International Union and can only be reinstated by the International Executive Council or by convention action.

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ARTICLE II.

Section 1. This constitution shall be amended on convention floor by a roll call per capita vote, or whenever a majority of the locals in good standing in the International Union shall propose an amendment or amendments or by recommendation of the International Executive Council. Same shall be submitted, properly drawn, to the International Secretary-Treasurer, who shall submit same at three months periods to the membership for ratification or rejection, along with ballots necessary for individual votes, based upon per capita tax paid to the International. No member shall be entitled to vote who is not in good standing, Australian ballot system to be used. Any proposals to amend this Constitution submitted less than 90 days prior to convention, shall be acted upon at regular convention.

Sec. 2. All votes shall be in the hands of the International Secretary-Treasurer within 60 days after submission of the question. A majority of all votes cast shall be necessary to sustain such amendment. It is also provided that members in isolated districts where they are unable to attend their local meetings regularly shall be provided an opportunity to vote upon proposed amendments by mail, the Secretary of his local submitting same to him in the same manner and notifying him of the time limit and furnish blank ballot therefor. The secretary of said local, upon receipt of votes from such isolated members, shall tabulate same and mail them with other ballots to the Secretary-Treasurer of the International Union. Ballots shall be canvassed by the local Executive Board.

Sec. 3. The President and Secretary-Treasurer of the International Union or their designees shall tabulate all votes received within fifteen (15) days

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immediately following the time limit as provided above, and shall notify all Locals by mail of the tabulated result of the total vote. All votes shall be resealed and so held until the first meeting of the International Executive Council thereafter and shall be canvassed by them to verify the findings of the President and Secretary-Treasurer, or their designees. The said amendment or amendments, if carried, shall go into effect 90 days after the blank ballots have been sent to the locals.

Sec. 4. Any amendment which fails to receive a majority vote necessary for it to become a law shall not again be submitted until six months from the date of previous submission.

Sec. 5. It shall require a two-thirds per capita vote to amend this Constitution in convention, or a majority vote by referendum of the membership.

ARTICLE III.

Sec. 1. The regular convention shall be held annually on the second Monday in August at Fort Worth, Texas, for the duration of the present Emergency. Special conventions may be called by the International Executive Council or by referendum on request of a majority of Locals whenever they deem emergency demands.

Sec. 2. Not less than thirty days prior to Convention each District Council shall select a member who is a delegate to Convention from a Local Union in that District to serve on the Law and Legislative Committee and a member to serve on the Credentials and Auditing Committee. Official confirmation of the selected committeemen shall be made by the District Council Secretary to the International President, to the International Secretary-Treasurer, and to the Executive Council Members.

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Seven days before the opening of such Convention, the Law & Legislative Committee shall meet in the Convention city and spend the remaining time in preparing to submit to the convention, all proposed amendments to, or changes in the constitution and laws of the International Union; and three days prior to same convention, the credentials committee shall meet in the convention city and spend the remaining time preparing to submit their report. They shall check the audits of the International Union for the fiscal year and report on credentials of all delegates upon the opening of the convention. In the event of no selection from any district, the President shall appoint a duly elected delegate from that district to act in either or both capacities.

Due notification to appear shall be given to all appointees on these two committees.

All proposed amendments or changes to the International Constitution must be submitted to the International Secretary-Treasurer in triplicate, not later than ten days prior to the date of Convention, to be prepared for submission to the Law & Legislative Committee. Any amendment may be submitted to the Law and Legislative Committee by receiving a two-thirds vote of the Convention after the ten day clause. All proposed amendments or changes reported out of Committee shall be mimeographed, both the majority and minority reports, in sufficient quantity to supply each delegate with a copy of this report and shall be placed in the hands of each delegate upon the opening of the Convention.

The salaries of the members of these two committees for these days shall be 12.00 per day and \$8.00 per day expenses. Such salaries and expenses are to be paid from the International treasury.

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Sec. 3. Upon the selection of the next convention city, the President shall appoint a program committee whose duties shall be to plan the procedure for the next convention and report its program to the International Executive Council at its last regular meeting prior to the convention. The International Secretary-Treasurer shall include the accepted program in the Convention Call.

Representation

Sec. 4. Every member of the International Union in good standing shall be represented by the delegate or delegates chosen to represent their local at convention. Voting strength of locals to be cast by delegate or delegates shall be based upon the average membership paid on to International Secretary-Treasurer for the preceding fiscal year. That is the total number paid on divided by twelve.

Sec. 5. In the event local Unions find it necessary to issue strike receipts during an authorized strike, the members receiving the strike receipts shall be considered as in good standing for the months for which such receipts were issued, and such receipts shall be computed in the local union's voting strength at regular or special conventions.

Sec. 6. Each local union shall be entitled to three delegates for the first five hundred (500) members or fraction thereof; and one delegate for each succeeding five hundred (500) members or fraction thereof.

Sec. 7. Delegates from individual unions may vote an equal percentage of the membership of the local union in which they hold membership when a roll call vote is taken, fractional votes to be eliminated. No representation by proxy shall be allowed.

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Sec. 8. Immediately after the opening of the convention there shall be appointed by the President the following committees: Officers' Reports, Ways and Means, Grievance and Appeals, Resolution, Jurisdiction.

The President shall appoint a committee on rules, prior to convention, and this committee will be given notice to appear at 8:00 A. M. on the opening day of convention.

These committees shall each consist of five members and any other committees that the convention shall deem necessary may be appointed. The President shall appoint all committees unless otherwise ordered by convention.

Election of Delegates and Alternates

Sec. 9. No member of a local union shall be eligible to election as a delegate to the International convention unless he shall have been a member of and in good standing in the International Union at least six (6) months and in his local union ninety (90) days immediately preceding the date of convention, but this shall not apply to the delegate or delegates of a union organized within less period than six (6) months.

When a member leaves the petroleum industry or allied industries peculiar to the petroleum industry he shall under no circumstances be elected as a delegate or alternate to the District Council or as a delegate or alternate to the International Conventions.

No international officer or international representative on the regular payroll of the International shall be allowed to serve as a delegate or officer of the District Council or as a delegate or alternate to the International Convention.

All international representatives shall be allowed

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to attend the International convention and shall be given voice on the floor, but not permitted to vote.

Sec. 10. Sixty days prior to a regular or special convention the International Secretary - Treasurer shall send out the call for the convention, together with sufficient credential blanks in duplicate, giving to all local secretaries the law governing the election of delegates or alternates, stating in full the requirements necessary to be complied with by each local union for representation in said convention.

Sec. 11. Upon receipt of call of convention it shall be read to the local union under head of communications at a regular or special meeting. If a local union wishes to send delegates or alternates they shall be elected not less than thirty (30) days prior to the convention and duplicate credentials mailed to International Secretary-Treasurer, and original held to be presented to convention upon arrival of delegate.

Sec. 12. No delegate shall be entitled to a voice or vote in a convention of the International Union whose local union has not previously paid to the International Secretary-Treasurer all indebtedness of his local union due the International. Delegates may pay such indebtedness then shall be entitled to all rights and privileges in convention.

Sec. 13. The administrative officers and the Executive Councilmen shall attend Conventions of the International Union and their salary and expenses shall be paid by the International Union as provided by this Constitution. International Officers shall have voice but no vote in Conventions. Any member in good standing in the International Union for a period of not less than one (1) year shall be eligible to be elected to any office within the gift of the International Union. It is further provided that the expenses and the salary of all delegates to the Conventions of the International Union shall be borne

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by their respective Local Unions, except as hereinafter provided. No elective International officer except Vice-Councilman shall be allowed to serve on any of the various committees during Convention.

Sec. 14. The Convention Fund shall be used by the International Union to provide first-class transportation, including berth, to and from convention city for one delegate from each Local whose delegates are seated.

Should Convention Fund be insufficient at time of convention, the Executive Council shall exercise their authority as provided in Article X, Section 1 of the International constitution.

ARTICLE IV.

Sec. 1. The elective officers of this organization shall be a President, first and second Vice-Presidents, a Secretary-Treasurer, seven International Executive Council Members and seven International Vice Council members. All officers shall take office upon the date, as prescribed in Article XV, and shall hold office, unless removed for cause, until their successors are elected and qualified.

Sec. 2. The compensation of officers shall be as follows: Salary for President, \$5400.00 per annum; salary for Vice-Presidents, \$3800.00 per annum; salary for Secretary-Treasurer, \$4200.00 per annum. Salary for International Executive Council members shall be \$12.00 per day for each day for attending the International Executive Council meetings and conventions of the Oil Workers International Union.

The International Executive Councilmen shall be allowed \$40.00 per month for expenses incurred in attending District Council meetings, and for incidental expenses.

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Salaries and per diem paid to International representatives shall be established by the administrative officers with the approval of the International Executive Council. Salaries shall not be less than \$260.00 per month. Per diem allowance for International representatives shall at no time exceed \$8.00. Representatives shall also be paid five cents per mile for necessary use of their car. The President may when in his opinion conditions justify, enter into arrangements with District Councils whereby the International Union will bear a portion of the salary and expenses of a Representative, subject to the approval of the Executive Council.

Sec. 3. When any officer is required to perform services away from his home, he shall be allowed in addition to the salary set forth above, an amount covering first class transportation by the most direct route to and from and \$8.00 per day for the President, \$8.00 per day for the Vice-Presidents and Secretary-Treasurer, and \$8.00 per day for Executive Council members for expenses. When impossible or impracticable to travel by train, bus or airplane, and in necessary travel dictated by his duties any employee shall be compensated for the use of his own conveyance at a rate of 5 cents per mile. All salaries and expenses shall be paid semi-monthly, provided proper expense account is rendered.

Sec. 4. The President, Vice-Presidents, and Secretary-Treasurer shall be allowed no personal expenses while at the International headquarters.

Not later than thirty (30) days previous to Convention the elected officers shall make individual reports and the International Secretary-Treasurer shall have same printed and in the hands of the Secretaries of all Local Unions and delegates 5 days

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previous to the convening of the annual convention. Nothing herein contained shall prevent said officers making supplementary reports on any matter to the annual convention.

ARTICLE V.

Duties of Officers

Section 1. The President shall attend and preside at all conventions of the International Union during his term of office; he shall be a standing delegate to National Conventions of any National Labor Group to which the Oil Workers International Union may be affiliated and shall attend same at the discretion of the International Executive Council. He shall devise a semi-annual password, which shall be communicated to local unions by the International Secretary-Treasurer.

Sec. 2. The President shall act in the capacity of chief administrative officer and shall be responsible for all activities of the Union, other than those assigned by convention to other elected officers. He shall plan and supervise all programs, negotiations, and other activities necessary for the advancement and welfare of the members of the International Union. It shall be the President's duty to conduct all strikes; spending all possible time in the strike area, and he shall participate in all negotiations when strike is imminent.

He shall designate the duties of the Vice-Presidents, subject to the approval of the Executive Council.

He shall be empowered to select and employ trained specialists for publicity, research, or other purposes, subject to the approval of the International Executive Council.

He shall procure legal advice when necessary.

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He shall interpret the Constitution and decide all questions, laws, and usages. His decision shall be binding unless amended or reversed by the International Executive Council or Convention.

Sec. 3. The President may appoint a local Representative for local unions, without salary, upon recommendation by vote of said local, however, said Representative shall, with the approval of the International Executive Council, be allowed compensation and expense when he is directed by the President to go outside the jurisdiction of his local or locality in the interest of the International Union, and such Representative shall submit weekly reports to the President.

Sec. 4. The President shall cause the books and accounts of the International Union to be audited each fiscal year by a certified public accountant, such accountant to be employed by the President subject to the approval of the International Executive Council.

Sec. 5. The International President shall be empowered to fill, by appointment, all vacancies occasioned by death, resignation or otherwise, until the next Executive Council meeting.

Sec. 6. In case of continued failure to comply with the Constitution by local union officials, after notification by the International office, it will be the duty of the International President to see that all possible protection is given to the membership of the local as well as the International Union.

When it becomes necessary in his discretion and subject to approval of the International Executive Council, such officers shall be removed and appointment made by the International President providing such appointment shall be approved by a majority

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of the local Executive Board, until an election can be held by the local membership filling such offices as it becomes necessary to declare vacant.

Sec. 7. The President shall make an itemized monthly report of his official expense account and submit same to members of the International Executive Council. He shall also submit to the locals each month a report of his official acts.

Sec. 8. Conventions of the Oil Workers International Union shall have authority to levy assessments when approved by the majority of the affiliated Local Unions. Between Conventions the President shall have the power to levy assessments upon the membership of Local Unions for the purpose of assisting strikes or resisting lockouts and to finance the Joint Organizational campaign, and then only upon the approval of the International Executive Council, subject to the approval of the majority of the Local Unions. Such approval or disapproval to be in the International Office within thirty (30) days after notice of intent to levy assessment is received.

Sec. 9. The International President shall issue shop cards where shop management complies with the rules prescribed by the International Executive Council.

Sec. 10. In any question appertaining to the welfare of the organization as a whole, the International President, with the approval of the International Executive Council, shall take such steps as will best preserve the interests of the organization subject to a referendum vote of the local unions within thirty (30) days when requested by 20 per cent of the local unions.

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As a result of any unauthorized strike, the International President may invoke this Section 10 of Article V.

Sec. 11. No International officer or representative shall be authorized to execute or terminate a Local or National agreement or supplement until a majority of members voting have voted favorably as provided for under Article V, Sections 13, 14 and 15. Violation of this provision shall constitute a dereliction of duty.

Sec. 12. All District Councils, Local Unions, or International Representatives, negotiating agreements, or contracts, or supplementary agreements shall be required to forward to the International office copy of same within ten days following the execution of same, and the International office shall be required to maintain a permanent file of said contracts, agreements and supplementary agreements. Such to remain the property of the International office thereafter.

Sec. 13. Agreements or supplements negotiated by Local Unions, representatives, or anyone delegated with authority to negotiate same, shall be ratified or rejected by Local Unions in regular or special meeting through a majority vote of members affected who are present at said meeting.

Sec. 14. The Local Union shall notify the International Office of the results by tabulation, showing the total number of members affected who hold membership in the Local Union, the total number voting, the total number of affirmative votes, and the total number of negative votes. This tabulation shall bear the Local Union seal and the signatures of the President or Secretary of the Local and one other officer of the Local Union.

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Sec. 15. The tabulation shall be mailed to the International Office within ten (10) days of such action and failure to do so shall be sufficient cause for the removal from office of the President or the Secretary, or both.

Sec. 16. National agreements or supplements may be negotiated, amended, or ratified only after a Majority of affected members voting have expressed their wishes by tabulation as provided in Article V, Sections 13, 14, and 15.

Sec. 17. The International Office shall send out all notices and make all arrangements for negotiations of national agreements as well as for supplements affecting more than one Local Union. When requested by the Local or Locals affected, it shall be the duty of the International Office to arrange meetings with management for the purpose of writing supplements immediately after national agreements have been written. National Agreements shall not be ratified until tentative supplements have been agreed upon.

ARTICLE VI.

Section 1. Each Vice-President shall be designated by and under the authority of the President to assume full direction over all operations and the servicing of each District assigned to him in accordance with a regional set-up as devised by the President with the approval of the Executive Council.

Sec. 2. Each Vice-President shall compile information on and become familiar with all activities under his jurisdiction, and said information shall become the property of the International Union. All representatives shall be given explicit instructions and specific assignments, and shall relinquish during the term of assignment any Local Union office to which they have been elected. Each Vice-President

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shall report weekly to the President on each representative and assignment under his jurisdiction.

Sec. 3. Each Vice-President shall carry International Representatives' credentials and shall have access to all books and records of Local Unions.

Sec. 4. Each Vice-President shall make an itemized monthly report of his official expense account and submit same to the members of the International Executive Council.

ARTICLE VII.

Section 1. The Secretary-Treasurer shall attend all conventions of the International Union and shall devote all of his time to the affairs of the Union. He shall, in connection with the President, establish an office in such city as may be designated by the convention, which shall be the official headquarters of the International Union, where all books, records, etc., shall be kept. He shall be the custodian of the funds of the International Union, and shall, under the direction of the International Executive Council deposit all funds in responsible banks; he shall give to the Executive Council as trustee for the International Union bonds in an accredited guaranty company, in a sum sufficient to cover all funds upon assuming office, which bond shall be paid for by the International Union after approval by the Executive Council. He shall perform such duties as may be required by law or as directed by the International Executive Council. He shall have the individual reports of the International Executive Council and administrative officers printed in pamphlet form and a copy of such report shall be mailed by him to every delegate-elect, and to each local union five days prior to the convention; he shall furnish to each local union, prior to the time of election of delegates

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to International Convention, credential blanks in duplicate for delegates. He shall immediately after the final adjournment of the convention cause the proceedings of same to be printed. He shall in connection with the President, within sixty (60) days of canvass of vote on amendment, prepare for distribution leaflets embodying said amendments; he shall attend to the printing of all necessary blanks and such other supplies as may facilitate carrying into effect the provisions of this Constitution.

Sec. 2. He shall procure interest on all funds whenever possible. He shall draw monies from the banks only by checks signed by himself as Secretary-Treasurer. He shall require all bills against the International Union to be itemized and shall only pay such bills as are in accordance with the order of the International Union or its laws; he shall have the books of deposit with all banks balanced at the end of each calendar month; he shall submit all his books and accounts to a Certified Public Accountant at the end of each fiscal year, which audit shall be incorporated in his annual report. The fiscal year shall end May 31st. He shall issue official receipts for all monies received.

Sec. 3. He shall prepare each month and mail a sworn, itemized statement of the balances of his bank account and a full monthly statement of receipts and disbursements of all kinds to each local union. He shall show in his monthly report all bills payable, all locals whose per capita tax is due and all bills receivable and amounts of each fund, as per Article X.

Sec. 4. He shall conduct his office in a systematic and business-like manner, doing business with the locals on a cash basis: this meaning that all locals shall balance their accounts with the Inter-

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national Union within thirty (30) days from date of credit. He shall mail a copy of the minutes of the International Executive Council sessions to each Local Union.

Sec. 5. He shall require the proper bonding of International Representatives and other officers; he shall procure legal advice when necessary, subject to approval of International Executive Council; he shall endeavor to collect all monies from any defaulting official, failing, he shall make collections from surety company or through other legal process. He shall furnish Representatives suitable report blanks and receive weekly reports of their daily work.

Sec. 6. He shall furnish individual ballots to all locals to be used in voting on all questions sent out for referendum vote.

Sec. 7. He shall quarterly show on a separate report to the International Executive Council total increase or decrease in membership for the preceding quarter together with the total expenditures in the interest of organization work. Any local upon request may secure copy of said report.

Sec. 8. The Secretary-Treasurer shall make an itemized monthly report of his official expense account and submit same to the members of the International Executive Council.

Sec. 9. He shall prepare an itemized report on the expense of maintaining the International Office and with the assistance of the President, shall prepare a quarterly budget for the operation of the International Union and submit same to the International Executive Council for their approval.

Sec. 10. The Secretary-Treasurer may, when necessary and subject to the approval of the Interna-

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tional Executive Council, leave the International Headquarters Office for the purpose of auditing accounts of local unions and other duties within the jurisdiction of his office only. He may request the International President to assign an International representative for the same purpose when deemed necessary.

Sec. 11. The Secretary-Treasurer shall pay all expense accounts semi-monthly, when submitted, on the forms provided by the International Office. Receipts for all monies expended must accompany expense accounts.

Sec. 12. When the International Officers call for financial aid from locals or other sources in order to aid any sister local or locals in trouble, the International Secretary-Treasurer shall circularize all locals for such financial aid, and all monies so contributed shall be sent to the Secretary-Treasurer of the International Union and be distributed under direction of the International Executive Council.

Sec. 13. The Secretary - Treasurer shall issue charters to Local Unions at the direction of the President. In the event of refusal, the applicants shall have the right of appeal to the International Executive Council.

Sec. 14. He shall issue charters to Ladies' Auxiliaries under such provisions as may govern local unions, except the International Office shall not receive any monies whatever other than payment for such supplies as may have been purchased.

When a majority of the chartered Ladies' Auxiliary groups apply for a national charter, the International Executive Council may grant such charter at their discretion.

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ARTICLE VIII.

Section 1. The International Executive Council shall consist of the seven elected international executive council members and the elected international administrative officers, which body shall see that the provisions set up in the constitution are adhered to and carried out by the administrative officers.

The International Executive Council shall meet immediately after adjournment of the Convention in the convention city and thereafter shall meet in the international headquarter's city on the first Monday in November, February, and May. The council shall also meet in convention city one week in advance of convention.

The voting members of the Board will be the seven elected International Council Members.

The International President shall serve as chairman of the Executive Council, and the International Secretary-Treasurer shall serve as secretary of the Executive Council. For the transaction of official business a majority of the voting members shall constitute an official quorum. The International Executive Council shall meet in special session at the call of the President, or when petitioned to do so by a majority of the voting members of the International Executive Council.

Sec. 2. When the International Executive Council of the International Union calls for financial aid from locals or other sources in order to aid any sister local or locals in trouble, all monies so contributed shall be sent to the Secretary-Treasurer of the International Union and be distributed under direction of the International Executive Council.

Sec. 3. It shall be the duty of the International Executive Council to select a responsible bank in which all monies of the International Union must

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be deposited, and see that all funds of the International Union which are in excess of the bond of the Secretary-Treasurer are either deposited in a responsible bank or invested in registered bonds of the United States Government, said deposit or investment to be made in the name of the International Executive Council as Trustees.

Sec. 4. The International Executive Council shall revoke the charter of a subordinate union in case of continued violations or refusal to obey the laws of the International Union.

Sec. 5. The seven districts created at convention shall be as nearly representative as possible.

Each International Councilman and Vice-Councilman shall be a bona fide worker engaged directly or indirectly in the petroleum industry at the time of his election. He shall receive wages as provided in Article IV, Sections 2 and 3. When called to Council Meetings, conventions or special meetings, International Councilmen shall not receive salary and/or expenses from the International Union except as provided for, nor shall they be eligible for any salaried or appointive office within the International Union during term of office to which they have been elected. A roll call vote shall be taken on all questions, this to be included in the minutes.

Sec. 6. Vice-Councilman shall serve as Councilman in his full capacity in filling any vacancies caused by the Councilman's inability or refusal to serve, and shall draw the Councilman's salary and expenses while so serving; until such a time as Vice-Councilman may assume the duties of Councilman, they shall be considered as rank and file members with full rights and privileges. At any time that the Councilman elects to serve under the direction of the President or the International Executive Council or any State Council or Local Union as a paid

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Representative the Vice-Councilman shall assume full office as Councilman and shall continue in said capacity until after the adjournment of the next regular meeting of the International Executive Council. Any assignments given the Council member shall be at the discretion of his District Council.

This will not exclude Executive Councilmen from holding such offices as described in Article I, Section 3, in Local By-Laws of this Constitution, nor will it exclude him from serving as a committeeman provided his activities as committeeman be limited to contacts with the company for which he is employed.

Sec. 7. The administrative officers shall be responsible at all times to the International Executive Council for the administration and conduct of their respective offices. After proper hearing has been afforded at a regular or special meeting the International Executive Council may, by five (5) affirmative votes, temporarily suspend or remove from office any administrative officer of the International Union, who they find guilty of having failed to properly administer the duties of his office. Upon the appeal of the removed officer, such action shall be reviewed by convention, or subject to referendum as provided in the Constitution.

Sec. 8. The International Executive Council shall fill by appointment all vacancies occurring within the International Union. Temporary appointments may be made by the International President between Executive Council meetings.

Sec. 9. Delegates to the National Convention of any National Labor Group to which we may be affiliated other than the International President, who by virtue of his office shall be a delegate to that body, shall be selected by the International Executive Council. Said delegate or delegates shall represent the International Union at such Convention.

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ARTICLE IX.

Section 1. The Vice-President in charge, with the approval of the President, shall appoint all International Representatives who shall be credentialed and bonded by the International Union. Such appointments may be revoked by the President subject to the approval of the Executive Council. District Councils paying a major portion of the salary and expenses may select a Representative to be appointed.

Sec. 2. All persons, excepting those duly elected by the membership or appointed by an authorized officer of the International Union, are prohibited from representing the International Union in the transaction of official business for the International Union.

ARTICLE X.

Section 1. The revenues of the International Union shall be divided as follows:

General Fund	88%
Defense Fund	10%

and as hereinafter provided in Article X, Sec. 6.

Convention-Transportation Fund 2%
until such time as the General Fund has accumulated a surplus to the amount of \$50,000.00, at which time all monies over that amount in the general fund shall revert to the Defense Fund.

No indebtedness in excess of 88% of the average receipts for the previous three months shall be incurred during any calendar month of the subsequent three months except in case of strikes or lock-outs, at which time the Defense Fund may be expended as provided in Article XII, Section 10, and except that any monies accumulated in the General Fund in excess of current commitments may, upon approval by the International Executive Council, be used for a planned organization program, and fur-

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ther excepting that funds allocated each month for the field operations of the Union and not expended during that month may be retained in an Operating Fund and thus made available for planned operations of the Union. All current month's bills shall be paid during the following calendar month from the General Fund.

Conventions only shall have the power and authority to transfer the money of the organization from one fund to another whenever deemed necessary to maintain the integrity of this organization, except as provided for in this article. All monies shall be credited to the fund for which they are designated. The Executive Council, between conventions, shall also have this power and authority.

All transfers of money from one fund to another shall be shown on the International Secretary-Treasurer's monthly report by a credit and debit, to their respective funds. The total amount due and in each fund shall be shown on the Secretary-Treasurer's monthly report.

Sec. 2. The General Fund shall be used to defray all expenses of the organization not otherwise covered; the Defense Fund shall be used to assist Local Unions in case of strikes or lock-outs.

Sec. 3. Each local union shall charge a minimum initiation fee of not less than \$2.00 and a maximum of not more than \$25.00. A paid-up card in any bona-fide labor union recognized by the Oil Workers' International Union will be accepted in lieu of initiation fee by payment of the current month's dues, such card shall be sent to the International Secretary-Treasurer's office by the local secretary. No other fee, fine, assessment, or payment of any description shall be solicited or collected from any applicant to entitle him or her to membership in the organization, nor shall there be any donation accept-

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ed from such applicant. All money collected from applicant for membership shall be determined "initiation fee," one-fourth of initiation fee or not less than \$1.25 to be paid to International treasury unless otherwise determined by the International Executive Council. In no instance shall there be dues charged for the month in which a member's application is accepted. All successful applicants for membership are required to appear at the Local Union at their earliest convenience for initiation. Any applicant who fails to receive the obligation shall pay dues from the date application was received and shall be subject to any penalties imposed by the Local Union. The newly accepted applicant shall begin paying dues at the rate charged by the local union for the first month following the date of payment of initiation fee, regardless of the date of his obligation into the local union.

Sec. 4. The International Union shall charge a fee of twenty-dollars (\$20) for charter and local supplies, and they shall not receive per capita tax upon the initiation fees of the charter applicants as long as the number does not exceed twenty (20) men.

No officer of the Union will be permitted to issue charter to groups of workers in instances wherein the charter application is based on the race, color, creed, sex of the charter applicants, except by mutual request of the parties involved.

Sec. 5. Charter outfit shall consist of 1 official charter; 1 official seal; 1 official initiation fee receipt book; 1 official reinstatement fee receipt book; 1 official steward receipt book; 1 secretary warrant book; 1 official monthly cost sheet; 1 official book transfer cards; 1 official book withdrawal cards; 100 obligation cards; 100 out-of-work requests; 10 official constitutions; treasurer's receipt book; 100 file cards; 1 minute book; 1 file box; 3 official rituals.

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Each new applicant shall receive an official water-marked monthly dues card with the charter and each subsequent month thereafter. Other necessary bookkeeping and record forms shall be furnished the financial secretary of each Local Union monthly.

The above supplies listed as official shall be procured only from the International Office. No Local Union or member shall cause to be printed any of the above official supplies.

All orders for stationery and supplies must be paid within thirty (30) days from the date shipped postpaid. Failure to make these payments within a thirty (30) day period shall constitute dereliction of duty, and no further supplies will be shipped to the offending Local. Any Local refusing to comply with this provision may be suspended until such time as such Local Union signifies a willingness to comply with this provision.

Sec. 6. The Local dues shall be \$2.00 per month except that the Local Union may raise these dues to \$2.15 where conditions necessitate. Said dues to be divided as follows:

Per capita tax that will be collected on each month's dues shall be 70 cents plus 20 cents. The 20 cents shall be used to continue the planned Organizational Program as laid down by the 13th National Convention. Such monies payable to the International Secretary-Treasurer, and the remainder is to be the property of the local union, to be disbursed as the laws of the local union provide, subject to the International Constitution governing the conduct of local unions. The per-capita tax shall be held in local treasury only until the end of the month, when it is to be sent, together with a report of all business transacted during the month, to the International Secretary. This money shall at all times be the property of the International Union and no authority shall

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exist or be created for the expenditure of any portion of this per capita tax and it shall be forwarded by the local union secretary without the necessity of a vote of the local union. Whenever examination of the books of a local union develops the fact that any funds due the International office have been expended for "any" other purpose by the local officials, the International President or the International Secretary-Treasurer is hereby authorized and instructed to remove the officers forthwith and appoint a representative to take charge of such local union's affairs until the local union shall demonstrate a willingness and ability to obey the laws:

Sec. 7. All local secretaries shall each month submit a monthly report of business transacted by their local union to the International headquarters. This report shall be made on suitable forms provided by the International office. This shall be part of the local secretary's duty, and failure to submit reports each month, for previous month, shall constitute dereliction of duty and the International office shall act accordingly.

Each local union shall cause to have audited each year ending December 31, all financial transactions for the preceding year, and file a copy of this audit on forms provided by the International Secretary-Treasurer which audit shall be in the International Office before February 15 of the succeeding year.

Sec. 8. Any local union which shall fail or refuse to pay its per capita tax or other monies, or any part thereof, to the International Union within two months after becoming due, shall be suspended at the discretion of the International Executive Council, and shall immediately return all funds, charter, seal and supplies to the International Secretary-Treasurer.

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The Secretary-Treasurer of the International Union shall give such derelict union fifteen (15) days' notice of the action to be taken. No local shall be reinstated until it pays all indebtedness charged to it at the time of suspension.

All financial officers shall be covered by a faithful performance of duty and honesty bond, this bond to be at the expense of the Local Union or District Council and to be paid by the Local Union or District Council, on the date of application. The bond to be procured through the International Headquarters Office.

Sec. 9. When a member leaves the jurisdiction of the International Union he may take a withdrawal card providing he has paid the current month's dues. When a member in good standing is promoted to a position outside the jurisdiction of the local agreement in effect at the plant where he is working, he will be given an honorable withdrawal card upon request. Any member holding a withdrawal card who again resumes work within the jurisdiction of the International Union shall pay the current month's dues to the local in whose jurisdiction he is employed. A member depositing Withdrawal Card with a Local may be accepted upon receiving a majority vote of members present.

Any member who fails to deposit his withdrawal card within 10 days after resuming work, with the secretary of the local where such member is employed, shall be subject to revocation of such withdrawal card, and his membership shall be subject to reinstatement rules as provided, i. e., such member shall be reinstated as though no withdrawal card had been issued.

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Any member who is unavoidably out of employment for a period of thirty (30) consecutive days may apply in writing on the forms provided, to the Secretary of his local and after such written application, shall receive an out-of-work receipt, provided that he satisfies the members of his local, or, in territory where no local exists, the International Executive Council, that he is duly entitled to such receipt.

Any member who has been in continuous good standing with the International Union for ten (10) years, and who is retiring from active duty, may apply and be issued an honorary appreciation service card. Card to be revoked if member becomes gainfully employed.

Any member who is called or volunteers for military training "or service" by the United States government in a period of national emergency shall retain all rights and privileges as a member without payment of dues during the period of such training or service. The local secretary shall notify the International Secretary-Treasurer of such training or service and the member, when discharged from training or service, shall resume payment of dues in the same status as when called by the government. A suitable card shall be furnished by the International Secretary-Treasurer's Office.

All elected officers or appointed Representatives of the International Union who are called from their duties or volunteers for military or other service for or by the United States Government during a National emergency shall return to their status as an

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officer or Representative when they return from such service, provided they return within the tenure of their elected office or appointed term.

Sec. 10. Any member who leaves the jurisdiction of any local union and procures employment within the jurisdiction of another local, may transfer his membership to the local union in said jurisdiction within 90 days. When a member transfers from one Local to another all dues and assessments, including the current month, must be paid to the Local from which the member is transferring.

When a member is transferred from one Local Union to another his membership will be transferred in the International Office only after the duplicate card has been received from the Local from which the transfer is issued. Failing to do so within the prescribed time, the Local Secretary may call upon the Local from whose jurisdiction the member came for such immediate transfer. When the majority of the members whose membership is affected deem it necessary the International Executive Council may transfer or prohibit the transfer of members or groups of members from one Local to another. This shall not, however, apply to any Locals less than 10 miles distant from one another.

Sec. 11. No member or group of members or any local union or District Council of this International Union shall have authority to declare the products of any oil company "Unfair" or place such products on any "We don't patronize list" or take any concerted action which might have the effect of injuring such company's sales, unless such action has first been submitted to and approved by the Inter-

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national Executive Council. The International Executive Council shall grant such authority, on request, whenever the International Union has abandoned efforts to reach agreement with such company in matters affecting any portion of its membership concerned.

Members Who Become Suspended for Dues and Assessments

Sec. 12. Any member shall have full rights and privileges of membership until he is three (3) months in arrears for dues, assessments, or fines, at which time he shall be suspended from all rights and privileges of membership.

Sec. 13. Any member who has been so suspended from a Local Union can only be reinstated by applying to and being accepted by the Local Union in which his delinquency occurred, paying a minimum reinstatement fee of \$2.00 and the current month's dues, but not more than \$25.00 and the current month's dues. Members so reinstated must again take the Union obligation as provided in Section 3 of this Article. Local Secretaries shall remit 25 per cent of such reinstatement fee to the International Secretary-Treasurer for each reinstatement accepted.

If such a member applies to another Local for reinstatement within two (2) years from the date so suspended, the Secretary of the Local to which he applies shall charge for said reinstatement the current amount charged by the Local Union in which said member went delinquent, the same being forwarded to the Local in which delinquency occurred thereupon transfer will be issued.

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Sec. 14. Per capita tax shall be paid to International Union for members who have paid dues for current month or in advance. It is further provided that back per capita tax shall be paid on members paying dues for delinquent months. That is, if a member is two months in arrears and pays arrearages, two months' per capita tax shall be remitted with the next report on said members and if a member pays three months' back dues at time of or before suspensions, three months' per capita tax shall be remitted on said member.

Sec. 15. Any worker eligible for membership not in jurisdiction of a local union may affiliate direct with the International office by complying with the laws of the organization, and paying the minimum initiation fee, and the regular monthly dues of \$2.00, or may transfer from his or her local union in accordance with the law governing transfers, and continue his or her membership in good standing by paying the regular monthly dues, \$2.00, direct to the International Secretary-Treasurer.

Sec. 16. Local unions may engage in the formation of joint councils for mutual benefit making such joint agreements as will conserve and protect their rights and interests, providing that such joint action at all times conforms to the International Constitution.

Such councils when formed shall be chartered by the International Office and submit a constitution to the International Headquarters for approvals, and at no time shall such a council have power to coerce or

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compel the cooperation of any local union that does not care to affiliate.

ARTICLE XI.

**Charges and Trials of Members and Officers
of Local Unions**

Section 1. Neglect of duty of an officer or failure to comply with the provisions of International or local laws by members, may be punished by reprimand or fine at the will of two-thirds, or by suspension or expulsion at the will of three-fourths of the members in good standing of a local union voting on reprimand, fine, suspension or expulsion, and no punishment may be inflicted or penalty enforced until after due trial in accordance with the local and International laws.

When a union arraigns a member who for any cause is outside its jurisdiction, and the party so arraigned has formerly been in good standing with the organization, it is the duty of said union to give him official notification of the fact and allow him the privilege of defending himself in regular or special meeting.

Sec. 2. When a local union is cognizant of the performance of a disreputable act by a member, not working within the jurisdiction whether such act was performed within its jurisdiction or not, it is its duty to prefer charges against him through its secretary before the local union under whose jurisdiction he does work.

Sec. 3. When through the action of a local union a member is suspended and debarred from the right to work at his trade, and is subsequently proven guiltless of infraction of International or local laws

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said local shall be compelled to remunerate at its prevailing scale such suspended member for the time lost while under suspension.

Sec. 4. Accusations or charges against a member must be made in writing by a member of the union within thirty (30) days of the time that knowledge of the offense alleged comes to the member making the charges, and may be presented to the president of the local at any time within 30 days.

Charges must be signed by the party presenting them and shall be accompanied by the affidavit of the party that he has personal knowledge of the guilt of the accused. Within five days after the presentation of the charges to the president he shall cause a copy of the charges to be served upon the member accused. The president shall present the charges to the union at the next regular meeting, when, if the charges are deemed sufficient by a majority of the members present and voting, a committee of five members shall be appointed by the president to investigate the charges. Such committee shall hear all parties to the controversy, but the member accused may, without prejudice to his interest, waive his right to appear to be heard by the investigating committee. The investigating committee shall report its findings at the regular meeting following the meeting at which it was appointed. If the charges are found worthy of trial by the union the president shall appoint a committee of five to try the case. But if the accused shall object to the appointment of the trial committee by the president, or to the committee as appointed by the president, then a committee of five to try the case shall be drawn by lot by the members present but the member presenting the charges, the member accused

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and members who may be witnesses shall not be eligible to membership on the trial committee. Said committee shall notify the parties and their witnesses of the time and place of sitting. Both parties shall have the right to counsel. Said counsel shall be members of the union. At the demand of either party witnesses shall be sworn by notary public or some other officer authorized to administer oaths. If either party fails to appear (unless excused for cause shown) the inquiry shall proceed. The committee shall at the next stated meeting report the evidence and its judgment in the case. The accused shall then have the privilege of defense before the union, after which the secretary shall read the judgment of the committee, and the president shall submit it to a vote of the union, and a two-thirds secret vote of the members shall be necessary to convict. If more than one charge has been made the vote may be taken on each charge, separately, in the same manner. If the charges, or any of them, be sustained, or if the accused pleads guilty, the vote shall then be taken on the penalty recommended by the committee, if any, but this recommendation may be amended and the vote shall be first upon the heaviest penalty proposed. It shall require a three-fourths vote to expel or suspend from membership, but a majority vote only to impose any lesser penalty after conviction. All expenses incurred by the prosecuting upon, or any member of the union, or by the defense shall be borne by the union in case of the acquittal of the accused.

Sec. 5. Upon first trial should the accused be convicted, the fine, if one is imposed, shall not exceed twenty-five (\$25.00) dollars.

Sec. 6. Any member bringing charges against another which he fails to sustain by proper evidence

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may, by a two-thirds vote of the union and without referring the matter to any trial committee, be censured, or fined an amount equal to the expense of the trial he has caused, or both censured and fined.

Sec. 7. No evidence shall be received or considered by a committee appointed to try charges except such as shall be offered at a regular hearing of a committee at which all parties interested shall be, or shall have been notified to be present. The defendant to the charges shall not be compelled to testify. The accused may, if he so desires, waive any and all of the rights guaranteed to him by the Constitution and By-Laws; and upon such waiver the union may, by a majority vote, proceed to act. Nothing herein contained shall interfere with the appeal rights of the accused. If the accused feels that an injustice has been done him by his union, he shall give notice of appeal to the International Union as set forth in its Constitution. A member of the International Union who is not satisfied in the judgment of the court of last resort (the convention of the Oil Workers International Union) and who seeks redress in the courts, will be required to deposit with the Executive Council an approved bond sufficient to cover the costs entailed by the International Union in defending the action, and the same procedure shall be followed when any member or members shall seek an injunction against the International Union, its officers, or any of its local unions.

Sec. 8. Any officer or member of any branch of the organization guilty of embezzlement of or misappropriating any of the funds of the organization shall be prosecuted by every means possible by the branch whose funds are embezzled or misappropriated, and shall not be allowed to hold any office in the organization thereafter.

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Sec. 9. Any member or officer of the Oil Workers International Union who furnishes a complete or partial list of our membership excepting list of local secretaries to any person or persons except to those whose official business requires them to have such a list, shall be suspended from membership for a period of six months and will be debarred from holding office in the organization for a period of two years.

Sec. 10. Any member guilty of slander or circulating, or causing to be circulated, false statements about any member, or any member circulating or causing to be circulated any statement wrongfully condemning any decision rendered by any officer of the organization shall upon conviction, be suspended from membership for a period of six months, and shall not be eligible to hold any office in any branch of the organization for two years thereafter.

ARTICLE XII.

STRIKES

Sec. 1. In the event of a disagreement between a local union or local unions and their employers upon any matter which in the opinion of the local or locals may result in a strike, such local or locals shall call a meeting of said local or locals of which every member affected shall be regularly notified, to take action thereon, no member shall vote on such question unless he is in good standing.

It is also provided that members in isolated districts unable to attend meetings shall be provided an opportunity to vote on strike, the secretary of his

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local shall deliver or cause to be delivered a ballot to him, notifying him of the time limit.

Sec. 2. Should three/fourths of the affected members voting decide on a strike, by secret ballot, the president of the Local Union or presidents of Local Unions, shall in conjunction notify the International President of the cause of the matter in dispute; what wages, hours, and conditions of labor then are; what advances, if any, are sought; what reductions are offered, if any; stating the number employed and unemployed; the state of trade generally in the locality and the number of persons involved if the strike is called, union or non-union; also the number of members who would likely become entitled to benefits herein provided should the application to strike be authorized and approved.

The President of the International Union shall investigate or cause an investigation to be immediately made of the matter at issue and endeavor to adjust the difficulty. If his efforts should prove futile he shall take such immediate steps as he may deem necessary in notifying the International Executive Council and if a majority of said Council shall decide that a strike is necessary such union or unions shall be authorized to order a strike, but under no circumstances shall a strike except on contract work be deemed legal or monies expended from the Defense Fund on that account, unless the strike shall first have been authorized and approved by the President and the International Executive Council. Strikes on contract work may be approved by the International President in the interest of expediency.

Sec. 3. No member shall be permitted to vote on the matter of proposed strike until he has been a member of the organization in good standing for

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six months, unless otherwise authorized by the International Executive Council.

Sec. 4. Any local union inaugurating a strike without the approval of the International Executive Council shall not receive benefits on account of said strike.

Sec. 5. Before a strike shall be declared off all members affected who are in good standing must be notified, a special meeting of union or unions shall be called for that purpose, and it shall require a majority vote of all members present to decide the question either way.

Sec. 6. In case any employer dealing with his employes through agreement in one locality, refuses to grant reasonable demands in another locality, the International Executive Council may, in its discretion, request all locals in whose jurisdiction this employer operates to take a strike vote, to establish the willingness of all employes to cease work at all points, for any employer who might be an offender against the union.

Sec. 7. No monthly dues shall be collected from members affected during period of strike or lockout or during compulsory unemployment in the oil industry following such period of strike or lockout. Special Out of Work cards may be issued to those members not employed in the oil industry where cases are still pending, and those members shall be permitted to attend their Local Union meetings and have their voice and vote only on those matters pertaining to their individual case.

DEFENSE FUND PAYMENTS

Sec. 8. The money of the Defense Fund shall be drawn only for the sustenance of lock-outs and

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strikes of local unions when such strikes are authorized, endorsed and conducted in conformity with the provisions of this article.

Sec. 9. No Local Union or Unions shall be entitled to benefits from the Defense Fund unless the Local Union has been in continuous good standing for six (6) months prior to the effective date of the strike unless such Local or Locals shall have been made the victim of other Locals affected or of the employer. In case of strikes on contract work, this provision may be suspended by the International President.

Sec. 10. When a strike has been inaugurated under provisions hereinbefore set forth, the International Secretary-Treasurer shall be authorized by the President, the International Executive Council concurring, to pay strike benefits from the International Defense Fund, subject to the International representative's recommendations. All benefits paid shall be based on the needs of the strikers. Strike benefits will not start until fourteen (14) days have elapsed from the day the strike or lockout was inaugurated. Each striking member shall receive one strike receipt for each month in which said strike was effected. In cases where striking members have not paid the current month's dues, entitling them to strike benefit payment, Out-of-Work receipts shall be issued for the delinquent months, providing such member has not been suspended.

Strike receipts may only be issued for the months in which said strike exists. All employed members involved are eligible for strike benefits who have been in good standing in the striking Local Union for a period over thirty (30) days. Members laid off who have pending grievances at the time of the strike may receive strike benefits upon recommen-

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dation of the Local Executive Board, subject to the approval of the International President.

Sec. 11. Strike benefits from the Defense Fund shall be discontinued upon acceptance of a settlement or ratification of an agreement as provided herein. This provision shall apply only to settlement effected after the acceptance of this section.

Sec. 12. No member of a local union on strike shall be entitled to weekly benefits unless he reports daily to the proper officer of the local union while the strike continues and no member who shall receive a week's work, three days to be considered a week, shall receive benefits for that week. Any member refusing other work while on strike and in the opinion of his local union's strike committee such work is not in conflict with any of labor's interests, shall not be entitled to any benefits.

Sec. 13. In case of lock-outs, or the victimization of members, the International Executive Council shall have power to pay benefits if, upon investigation, it is found that the local union whose members are involved did not by their action or demands provoke the lock-out by their employer.

Sec. 14. During the continuance of a strike the International Representative in charge shall make weekly reports to the Secretary-Treasurer of the International Union, showing the amounts of money distributed for benefits, and to whom paid, furnishing individual receipts to the Secretary-Treasurer of the International Union from all members to whom such benefits have been paid, and all other facts that may be required.

Sec. 15. When any Local Union finds it necessary to ask that Local Unions be circularized for financial assistance, such Local shall appeal only to

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the administrative officers for that aid. When in the judgment of the administrative officers the appeal is found warranted, the administrative officers shall cause to be sent to each Local Union in the International Union a circular appeal soliciting funds for the relief of the distressed local. If in the judgment of the administrative officers the appeal is not warranted, the distressed Local may then appeal to the District Council with which it is affiliated. If the District Council finds that the appeal deserves consideration, the Council may then request that the administrative officers immediately circularize all Local Unions asking for assistance for the appealing Local. If the administrative officers still feel that the appeal is not warranted, the distressed Local may appeal to the International Executive Council. If the International Executive Council feels that the appeal is warranted, they shall instruct the administrative officers to comply in their request. All monies so contributed shall be sent to the office of the International Secretary-Treasurer and will be forwarded to the distressed Local, who shall account for same by a certified statement to the International Office.

ARTICLE XIII.

The Official Journal

Section 1. When the finances of the organization will permit, there shall be published by the International Union an official journal known as the International Oil Worker, which shall be at all times owned and controlled by the International Union. The editor of the International Oil Worker, under supervision of the International Executive Council, shall have discretionary power to exclude from the columns of the paper all personal, slanderous and defamatory articles, and he is instructed to exclude

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therefrom all matters not in conformity with the general policy of the International Union or any National Labor Group with which we may be affiliated.

Sec. 2. A copy of the International Oil Worker shall be issued to each member in good standing. All local secretaries shall provide a list of delinquent members and those changing addresses.

Sec. 3. The International Executive Council shall require the editor of the International Oil Worker to file an annual report of the financial condition, receipts and disbursements, and other matters they deem necessary with the International Secretary-Treasurer, and at the same time that reports of other officers are made.

ARTICLE XIV.

Section 1. In each district now existing and those hereafter created, whenever the majority of the local unions by a majority vote forms a district council, remaining locals of the district may become affiliated with such council.

Sec. 2. Whenever a district council is formed by a majority of local unions in any district, such council shall, after being chartered by the International Union, have full autonomy to function in the interest of such district in conformity with the provisions of the International Constitution and By-Laws.

Sec. 3. Per capita tax, when determined by unanimous vote of the locals affiliated with the chartered District Council, shall be paid monthly to the Secretary-Treasurer of the District Council. Any affiliated local union which shall refuse to pay its per capita tax or other monies or any part thereof

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due such district council within three months after becoming due, shall have their local charter revoked by the International Union.

Sec. 4. It shall be understood at all times that any local union shall have the right to appeal from any decision of the district council to the International Executive Council. Their decision shall be final and binding upon district council and such locals affected.

Sec. 5. No district council constitution or any proposed changes therein shall at any time become effective until after being reviewed and approved by the International Executive Council. The Secretary-Treasurer of the District Council shall furnish a financial and activity report to the International Executive Council when required.

The Financial Officer or Officers of the District Council shall submit an annual audit, on forms submitted by the International Secretary-Treasurer, of the Council's funds to the International Executive Council on or before February 15 of each year covering the preceding calendar year. It is also provided that all district council officers shall be bonded in a sum sufficient and changeable to suit conditions, through the International Union, the premium on such bonds to be paid by the district council, bonds to be held in the International office.

Sec. 6. In each district now in existence, and those hereafter created, there may be published whenever possible, under the authority of the duly constituted district council, a district publication to be issued at least once a month, and to be sent to each member in every district where such publication is issued, and to all International officers. The funds necessary to support such publications shall be supplied by the members in the district where issued.

CONSTITUTION AND BY-LAWS**ARTICLE XV.****Nomination and Election of Officers**

Section 1. All International officers shall be nominated and be eliminated until not more than two (2) nominees remain for each office. Said nomination to be by delegates assembled at convention as the first order of business on the last day of convention. Elimination shall be made by roll call per capita vote.

The offices of Council Member and Vice Council Member shall be nominated and eliminated to two (2) nominees for each office by the delegates from the districts affected.

If the acting officer is not nominated for the office which he holds, convention action shall determine who shall fill this office for the interim between nomination and election, providing that no nominee shall fill this office for this temporary period.

All International officers shall be elected by referendum vote.

Council and Vice Council Members shall only be voted on by the Districts affected.

The Secretary-Treasurer shall have ballots printed with the names of the candidates who have qualified for each office. He shall have these ballots in the mail to the Local Unions on or before fifteen (15) days after final adjournment of Convention. The election shall be held in the interim between twenty (20) days and forty (40) days after final adjournment of Convention. The Local Unions may establish rules for their elections providing such rules do not conflict with the following rules:

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Only members in good standing are allowed to vote.

Each eligible voter shall register on list provided, except in instances where the Local Unions mail ballots, in such cases, the Local Election Committee shall make a notation on the registration list provided showing that the member has been mailed a ballot, and also make a notation whether or not the ballot was returned.

Each eligible voter shall receive one ballot. If a ballot is spoiled it must be returned to the Election Committee and marked "void."

Tellers' results shall be summarized on the form provided.

All election results, registration lists, marked and unmarked ballots must be sent to certified public accountant selected by the International Executive Council, postmarked not later than forty-five (45) days after final adjournment of Convention. The certified public accountant shall acknowledge receipt of ballots. The certified public accountant shall notify the Secretary-Treasurer of the results of the election.

The candidates receiving a plurality shall be declared elected. The Secretary-Treasurer shall announce the results of the election not less than sixty (60) days after final adjournment of Convention.

All officers shall assume office upon the sixty-fifth (65th) day after final adjournment of the National Convention and following their election, and shall hold office, unless removed for cause, or by action taken under Paragraph 3 of this Section 1, or until their successors are elected and qualified.

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Sec. 2. Any International officer shall be subject to recall by referendum in ninety (90) days after election, provided he becomes derelict in his duties or shows incompetency to fill the office to which he has been elected. Such recall shall take place when a majority of locals so demand.

Sec. 3. Upon demand for such recall for any International officer the International Secretary-Treasurer shall provide ballots for the various locals to be used in said recall. Ballots to be in the hands of the local union secretaries within thirty (30) days after such demand has been made.

The parties demanding the recall shall have the privilege of submitting to the members of the various locals the complaint against said official in printed form, not exceeding two hundred words, and such officer shall have the same privilege of defending his action in a like number of words upon the ballot.

Sec. 4. After such recall has been declared and ballots have been placed in the hands of the local union secretaries, a ballot box shall be placed and sealed to receive the ballots of said members in a place provided by the local secretary.

Sec. 5. When any recall proceedings are legally instituted, those who demand the recall have the privilege of nominating a successor to each officer to be recalled. The candidate receiving the largest number of indorsements, from locals requesting the recall, shall be the nominee to oppose the official whose recall is demanded, and his name, with that of the incumbent, is to be placed on the recall ballot.

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Sec. 6. The ballot box is to be locked and sealed by the trustees of said local. The balloting of said local union shall be opened for a period of not less than twenty-four hours nor more than eight days, the method of counting to be decided by the local. Then said ballots shall be securely sealed and forwarded to the International Secretary-Treasurer's office by registered mail from local union secretary, and who shall be held responsible for mailing same. The ballots of said election shall be in the hands of the International Secretary-Treasurer not later than ten days after they have been canvassed by local union executive board. Any officer being subject to recall shall not be eligible to act upon such canvassing board.

Sec. 7. Immediately after the canvass of the vote by the International Secretary-Treasurer or if it be he who is being recalled, by the International President, the result shall be sent to all local union secretaries of the various locals affected by said recall. The canvass shall be made within 15 days after the local's ballots have been received. The ballots must again be canvassed and the result verified at the next meeting of the International Executive Council.

ARTICLE XVI.

Order of Business

Section 1. A quorum for the transaction of business shall consist of the majority of the delegates attending the Convention. The International Convention shall proceed with the following order of business:

1. Call to Order.
2. Presenting Credentials.
3. Roll Call.

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4. Election of Reading Clerk.
5. Appointment of Committees.
6. Reading of Minutes.
7. Report of Committees on Credentials.
8. Communications and Bills.
9. Presentation of Resolutions.
10. Reports of Officers and International Executive Council.
11. Reports of Committees.
12. Unfinished Business.
13. New Business.
14. Selection of a Convention City.
15. Adjournment.

Roberts' Rules of Order shall govern the deliberations of all Conventions.

RULES OF ORDER

The Following Rules May Be Used to

Govern Debate:

Rule 1. On motion, the regular order of business may be suspended by a two-thirds vote of the meeting at any time to dispose of anything urgent.

Rule 2. All motions (if requested by the chair) or resignations must be submitted in writing.

Rule 3. Any conversation, by whispering or otherwise, which is calculated to disturb a member while speaking, or hinder the transaction of business, shall be deemed a violation of order.

Rule 4. Sectarian discussions shall not be permitted in the meeting under any circumstances.

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Motions

Rule 5. A motion to be entertained by the presiding officer, must be seconded, and the mover as well as the seconder must rise and be recognized by the chair.

Rule 6. Any member having made a motion can withdraw it by consent of his second; but a motion once debated cannot be withdrawn except by a majority vote.

Rule 7. A motion to amend an amendment shall be in order, but no motion to amend an amendment to an amendment shall be permitted.

Debate

Rule 8. A motion shall not be subjected to debate until it has been stated by the chair.

Rule 9. When a member wishes to speak he shall rise and respectfully address the chair, and if recognized by the chair, he shall be entitled to proceed.

Rule 10. If two or more members rise to speak at the same time, the chair shall decide which is entitled to the floor.

Rule 11. Each member, when speaking, shall confine himself to the question under debate, and avoid all personal, indecorous or caustic language.

Rule 12. No member shall interrupt another while speaking except to a point of order, and he shall definitely state the point and the chair shall decide the same without debate.

Rule 13. If any member shall feel himself personally aggrieved by a decision of the chair, he may appeal to the body from the decision.

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Rule 14. If a member, while speaking, be called to order, he shall take his seat until the point of order is decided, when, if decided in order, he may proceed.

Rule 15. When an appeal is made from the decision of the chair the Vice President shall then act as chairman; said appeal shall then be stated by the chairman to the meeting in these words: "Shall the decision of the chair be sustained as the decision of this lodge?" The member will then have the right to state the grounds of appeal, and the chair will give reasons for his decision; thereupon the members will proceed to vote on the appeal without further debate, and it shall require a majority vote to sustain such an appeal.

Rule 16. No member shall speak more than once on the same subject until all the members desiring the floor shall have spoken, nor more than twice without unanimous consent, nor more than five minutes at any time without consent of two-thirds vote of all members present.

Rule 17. The presiding officer shall not participate in debate on any subject under discussion unless he temporarily vacates the chair. He shall rule on all points of order, subject to appeal, and in case of a show of hands being called and the vote being equally divided he shall have the deciding vote. (This does not apply to any election of officers or in any case where the vote is by ballot.)

Privilege Questions

Rule 18. When a question is before the meeting no motions shall be in order except:

1. To adjourn.
2. To lay on the table.

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3. For the previous question.
4. To postpone to a given time.
5. To refer or commit.
6. To amend.

These motions shall have precedence in the order herein arranged. The first three of these motions are not debatable.

Rule 19. If a question has been amended the question on the amendment shall be put first; if more than one amendment has been offered, the question shall then be put as follows:

1. Amendment to the amendment.
2. Amendment.
3. Original proposition.

Rule 20. When a motion is postponed indefinitely it shall not come up again except by a two-thirds vote.

Rule 21. A motion to adjourn shall always be in order except:

1. When a member has the floor.
2. When members are voting.

Rule 22. Before putting a question to vote the presiding officer shall ask: "Are you ready for the question?" Then it shall be open for debate. If no member rises to speak the presiding officer shall then put the question in this form: "All in favor of this motion say 'aye.;" and after the affirmative vote is expressed: "Those of the contrary opinion say 'no'." After the vote is taken he shall announce the result in this manner: "It seems to be carried (or lost); it carried (or lost), and so ordered."

Rule 23. Before the presiding officer declares the vote on a question any member may ask a division

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of the house; then the chair is duty bound to comply with the request, and a standing vote shall then be taken and the secretary shall count the same.

Rule 24. When a question has been decided it can be re-considered only by a majority vote of those present.

Rule 25. A motion to re-consider must be made by a member who voted with the majority.

Rule 26. A member being ordered to take his seat three times by the chair without heeding, shall be debarred from participating in any further business at the session.

TEMPORARY LOCAL BY-LAWS

(All sections of the following temporary local by-laws printed in capital letters are MANDATORY and must be contained in the by-laws of each local union affiliated with the Oil Workers International Union. All other sections are suggested sections and may be changed, amended, or modified by the local union subject to the approval of the international office before they may be placed into effect.) In the event any local union fails to promulgate its own by-laws, these temporary by-laws shall govern its procedure.

ARTICLE I

Section 1. ANY PERSON EMPLOYED IN THE PETROLEUM INDUSTRY AND WORKING WITHIN THE JURISDICTION OF THE OIL WORKERS INTERNATIONAL UNION SHALL BE ELIGIBLE FOR MEMBERSHIP IN A LOCAL UNION AFFILIATED THEREWITH UPON BEING ADJUDGED A BONA FIDE WAGE WORKER IN THE INDUSTRY OR AN EMPLOYEE OF THIS ORGANIZATION BY THE INVESTIGATING COM-

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MITTEE OF THE LOCAL UNION AND UPON RECEIVING A MAJORITY VOTE OF THE MEMBERS PRESENT SHALL BE ACCEPTED. IF AN APPLICANT SHALL BE REJECTED HE SHALL NOT AGAIN APPLY FOR A PERIOD OF THREE MONTHS. NO PERSON SHALL BE REFUSED MEMBERSHIP IN THE LOCAL UNION BECAUSE OF RACE, CREED, COLOR, OR SEX.

Sec. 2. These by-laws can be changed, amended, or repealed by a two-thirds vote of all the members in good standing of a local union present at a regular meeting thereof.

Sec. 3. The officers of a local union shall be president, three vice-presidents, recording secretary, financial corresponding secretary, treasurer, guide, guard, board of trustees, and executive board, the executive board to consist of the elective officers of the local union. Each local union shall be privileged to combine such officers as in the judgment of the majority members of the local union may deem necessary.

Sec. 4. THE STATED MEETINGS OF LOCAL UNIONS SHALL BE HELD AS DESIGNATED BY THE UNION. LOCAL UNIONS SHALL BE REQUIRED TO CALL A MEETING AT LEAST ONCE A MONTH: FAILURE TO DO SO SHALL CAUSE FORFEITURE OF CHARTER OF SUCH LOCAL UNION.

Sec. 5. At special meetings no business shall be transacted other than that for which the meeting was called.

ARTICLE II.

The Election and Duties of Officers

Section 1. The election of officers shall be by ballot. The president shall appoint two tellers who

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shall receive the votes cast. When there are more than two candidates for the same office, the one having the least number of votes shall be dropped at each successive ballot. The secretary shall declare the result to the president, by whom it will be announced to the meeting, provided, however, the candidate receiving a majority of all votes cast will be elected.

Sec. 2. The election of officers shall take place at the first meeting in June and December of each year. All officers shall be elected for a term of six months, excepting the financial secretary and treasurer, who shall be elected for a period of one year. The officers elected shall assume office the first meeting in January and first meeting in July.

Sec. 3. The duties of the president shall be to preside at all meetings and maintain order; he shall be entitled to vote on questions of membership and the election of officers, but on other questions he shall cast the deciding vote only; he shall announce the result of the election of officers, and all candidates for membership in the union. IT SHALL BE THE DUTY OF THE LOCAL UNION PRESIDENT TO SUPERVISE THE ACTIVITIES OF THE LOCAL UNION AND TO ENFORCE COMPLIANCE WITH THE INTERNATIONAL CONSTITUTION AND WITH THE POLICIES AND PROGRAMS OF THE INTERNATIONAL UNION.

The president shall in no case be allowed to discuss any matter before the union while presiding; all duly passed bills shall be endorsed by the president before the same can be paid by the financial officers or officers. It shall be his duty to call a special meeting at the request of seven members in good standing. It shall be a duty of the president to see that an annual audit of the local union's finan-

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cial affairs has been made and forwarded to the International Headquarters Office.

Sec. 4. The duties of the vice-president shall be to preside in the absence of the president; if all are absent, the local union shall elect a chairman pro tem., the secretary calling the meeting to order.

Sec. 5. Recording secretaries shall attend all meetings of the union, call the roll of officers, and keep a full and correct record of all proceedings of said meeting. If he fails to attend the meeting, he must not fail to send the books.

Sec. 6. The financial-corresponding secretary shall attend all meetings of the union, collect all initiation fees and dues; attest all the orders signed by the president. He shall have charge of the seal and do all necessary corresponding for the union. If it be impossible for him to attend the meeting he must not fail to send the books. At the close of each meeting he shall pay over all monies received by him to the treasurer, taking his receipt therefor; he shall make a weekly financial report and must notify at the end of each quarter all members who are in arrears for dues and request payment of the same.

Sec. 7. The treasurer shall receive all monies from the secretary and give his receipt for the same. He shall pay all duly passed bills signed by the president and attested by the financial-corresponding secretary; he shall also render at each regular meeting a detailed report of all monies in the treasury; he shall give bonds in such amount as the local union may deem necessary and deposit all monies in any bank designated by the union; he shall also give an account of all monies expended during the quarter. Bonds must be placed with International Secretary-Treasurer.

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Sec. 8. It shall be the duties of the trustees to watch over all monies and chattels of the local union. They shall check the accounts of the financial secretary and treasurer monthly and shall forward annually an audit of the local union's fiscal transactions to the International Headquarters Office not later than February 15 of the following year.

Sec. 9. It shall be the duty of the guard to allow no person to enter the room without the password. If any member shall report himself without the password, the guard shall report the same to the president, when if found correct and in good standing shall be ordered admitted; he shall not admit any member under the influence of liquor.

Sec. 10. It shall be the duty of the guide to prepare all candidates for initiation and conduct them to the president; he shall also conduct all officers elected to the president, for installation, and perform such duties as the union may require.

ARTICLE III

Admission and Dues

Section 1. NO APPLICATION FOR MEMBERSHIP SHALL BE ACCEPTED UNLESS ACCOMPANIED BY THE INITIATION FEE. SUCH FEE TO BE IN CONFORMITY WITH THE INTERNATIONAL CONSTITUTION. IN CASE THE APPLICATION IS ACCEPTED AND THE APPLICANT SHOULD LEAVE THE JURISDICTION OF THE LOCAL UNION ACCEPTING THE APPLICATION AND BE INITIATED INTO ANOTHER LOCAL, THE INITIATION FEE SHALL BE RETAINED BY THE LOCAL ACCEPTING THE APPLICATION AND ANY ADVANCE PAYMENT OF DUES SHALL BE SENT TO THE LOCAL INITIATING THE APPLICANT.

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Sec. 2. THERE SHALL BE NO FEE FOR ADMISSION BY CARD FROM ANY LOCAL UNDER THE JURISDICTION OF THE INTERNATIONAL UNION.

Sec. 3. THE MONTHLY DUES OF THIS LOCAL UNION WILL BE NOT LESS THAN TWO DOLLARS PER MONTH NOR MORE THAN TWO DOLLARS AND FIFTEEN CENTS PER MONTH, THE EXACT AMOUNT TO BE DESIGNATED BY VOTE OF THE LOCAL UNION. ANY MEMBER WILL BE ENTITLED TO THE PASSWORD AND VOICE AND VOTE IN THE MEETING OF HIS LOCAL UNION UNTIL HE BECOMES THREE MONTHS IN ARREARS EXCEPT IN CASE OF STRIKES AS PROVIDED IN THE INTERNATIONAL CONSTITUTION. ALL PERSONS NOT IN GOOD STANDING IN THE LOCAL UNION ARE PROHIBITED FROM PARTICIPATION IN REGULAR MEETINGS OF THE LOCAL UNION AND MAY ATTEND SUCH MEETINGS ONLY WHEN INVITED TO DO SO BY VOTE OF THE LOCAL UNION.

Sec. 4. No member under the influence of intoxicants shall be admitted to the union during the meeting; no rowdyism or vulgarity will be tolerated under penalty of fine of not more than one dollar or less than twenty-five cents.

Sec. 5. Seven members in good standing shall constitute a quorum for the transaction of such business as may come before the union.

ARTICLE IV.

Section 1. In case any member of this union shall be discharged in defense of the right of this union it shall be the duty of the union to report the same to the president or executive board, who may call a

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special meeting if deemed necessary, when a full investigation shall be made, and if the member has been unjustly discharged effort shall be made to reinstate him.

Sec. 2. Any member who, during a cessation of work ordered by this union, shall be found working, except by permission, or who shall at any time work below the scale established by this union, shall be fined or expelled at the option of the union.

ARTICLE V.

Section 1. The union may attach such fines and penalties to offenses not specified in these by-laws as it deems fit, provided they do not conflict with the Constitution of the International Union.

Sec. 2. A fine imposed upon a member by the local union may be remitted by a two-thirds vote of all members present at a regular meeting.

Sec. 3. The president shall appoint a member as steward of each lease (such member being first recommended by a majority of the men working on the lease) to see that every man has a paid-up card.

ARTICLE VI.

Section 1. All bills and other claims must be presented at a regular meeting of the local union and receive a vote of approval before payment.

Sec. 2. The treasurer shall pay all bills and claims in the order in which they have been allowed.


Sec. 3. No officer of the local union shall have power to incur any indebtedness on its behalf or appropriate any money without authority from the by-laws or from the union.

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ARTICLE VII

Section 1. All members of this union shall purchase union-made goods whenever possible to do so.

Sec. 2. This union shall not accept to membership any person against whom charges have been preferred until he has been cleared of such charges.



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Program

Oil Workers Victory Rally

Pelly City Hall

September 23, 1943

Chairman: L. F. McDonald, Head of Election Victory Committee, Local 1002, Oil Workers International Union, CIO.

Welcome: Mayor Olive of Pelly.

R. J. Thomas, member of National War Labor Board, and president of the largest labor union in the world, the United Auto and Aircraft Workers, and a Vice President of the Congress of Industrial Organizations.

C. M. Massengale, Assistant National Director of the Oil Workers Organizing Campaign, a charter member of one of the oldest Oil Workers Union locals in Texas, at Kilgore, made every oil boom in Texas.

Martin Burns, representative of the United Steelworkers of America who led the successful drive that organized the Hughes Tool plant in Houston, as well as seven other Houston metal plants.

[fol. 170] John Crossland, Sub-Regional Director of the Congress of Industrial Organizations, former stillman at the Shell refinery across the channel, for eight years the full time secretary of Shell local, Oil Workers International Union.

Join the CIO

Auspices: Oil Workers International Union—C.I.O.

500 West Texas Avenue, Goose Creek, Texas. Phone 1283

[fol. 171] DEFENDANT'S EXHIBIT No. 10

Speech Made by R. J. Thomas
at Pelly, Texas

Brother Chairman, Ladies and Gentlemen:

It is a privilege which I greatly appreciate to be invited here to speak to you tonight. Within the last eight

or nine months, I have had an increasing number of opportunities to talk in Texas to Texas workers. That has been because Texas workers, in increasing numbers are joining the various CIO Unions which cover their industries—automobile and aircraft workers, newspaper employees, steelworkers, oil workers and scores of others.

I have been invited to speak at this meeting tonight by fellow Texans and fellow Houstonians of yours whom the members of the Oil Workers have selected to be their leaders, officers and representatives. They invited me here to make a speech on the question of why oil workers should join the oil workers Union and vote for the Oil Workers Union in the NLRB election soon to be held among the employees of the Humble Oil Company in Baytown.

That was the kind of speech I intended to make here tonight. That was the kind of speech I had *prepared* to [fol. 172] make. A speech which listed the reasons Oil Workers should join the Oil Workers Union. And I intended to urge everybody in this audience tonight who was not already a member of the Oil Workers Union to become a member, here and now, tonight, at this meeting.

That is the kind of speech I am *going* to make tonight.

However, upon my arrival here, I found that there are some people in Houston—and in *Austin*—who *question* my right to speak here tonight, or *anywhere* in Texas, and in my speech to urge or ask or solicit workers to join a CIO Union.

I was confronted yesterday morning by stories in the newspapers which said that I had come down here to *defy* the laws of Texas and to *challenge* the law enforcement agencies of this county to do anything about it. It was all built up that I was the kind of guy that goes around the country violating laws in an irresponsible manner—a person without any respect for the laws of any state or of the United States.

Those charges are entirely baseless and without foundation.

[fol. 173] I didn't come down here to violate *any* law, and anybody who says I *did* is a *liar*.

I came down here, as I said before, at the invitation of your officers to do what I could to help organize Oil Workers into the Oil Workers International Union—CIO.

But when I read those charges in the papers, I made up my mind to two things:

1. I am still going to tell oil workers what I think are the benefits of CIO Unions and I'm going to ask them to join the Oil Workers Union.

2. I am going to add to my speech a point, which I hadn't planned to cover before, on freedom of speech and freedom of the press, as it is guaranteed to me and to you and to every citizen of this State, and to every other American by the constitutions of the United States and of Texas, and by decisions of the highest judicial tribunal in the country—the United States Supreme Court.

But, first I want to talk about the oil workers and their organizing campaign and why oil workers should join the Oil Workers Union—CIO.

[fol. 174] About eight months ago I made a speech in Dallas, which was broadcast over Radio Station KRLD, on the eve of an NLRB election in the North American Aircraft plant there, on why a majority of North American workers had already joined and were going to vote for the UAW—CIO.

(That was before it was against the law for me to speak in Texas.)

And in that speech I told the People of Dallas that a large and important group of their fellow citizens had decided to band themselves together in order to improve their working conditions, to raise their standard of living, to have an effective voice in the affairs of their government, to increase the production of the planes needed for all-out victory and to work with them to make Dallas and Texas and the United States a still better place to live in.

That statement needs to be amended here tonight *only* by substituting the words—Fighting Oil—for planes, and the word—Houston for Dallas.

Like the North American workers, the Oil Workers in Baytown, in order to give their organization more strength [fol. 175] and more effectiveness, have affiliated themselves with the Oil Workers International Union—CIO—the Union of oil workers throughout the nation.

They have taken and are taking this action in much the same spirit and for much the same reasons that your Harris County Medical Association is affiliated with the Medical Association; your Bar Association with the Amer-

ican Bar Association and your Chamber of Commerce with the United States Chamber of Commerce. Like the doctors, the lawyers and the business men, they have chosen the organization which is recognized nationally as the representative organization of oil workers in this country.

You know, people have told me that the people of Texas are different from people anywhere else in the country—different from any other Americans. You have to use a different approach with them, they said.

Well, for about the last year I've been studying about that situation and examining it and thinking it over.

Here are some of the facts that I have found:

There are more men from Texas in the armed services than from any other state.

[fol. 176] When the battleship, City of Houston, was sunk by the enemy, the people of this city raised enough money in war bonds, to pay for the building of another ship to take its place.

When Texas workers decide to organize a union—like they did at North American, Continental Motors, Firestone and other plants in Texas, they organize some of the best unions in the CIO.

Then I found out these things, too:

That Texas workers eat * * * and sleep * * * and get married * * * and raise kids * * * and go hunting and fishing * * * and go to church * * * and go to the polls and vote at election time * * * just like the workers in Michigan, where I come from, or New York, or Kansas or California or anywhere else in the United States.

They have the same skill, the same energy, the same desires, the same ambitions, the same efficiency as the workers in any other state.

They want to raise their kids properly, feed them nourishing food, make them healthy men and women, and give them a good education, just like I want to do with my kid and just like millions of other Americans want to do with theirs.

[fol. 177] And for their skill and energy and efficiency they want to get paid the same wages as the workers in any other state.

So the conclusion I have come to about Texas Workers and Texas People is simply this: That they are just the same as any other Americans except this—they make about the fightingest soldiers and the fightingest patriots and the

fightingest union men and women that I've ever run across yet—and whichever or how many of the three you are, you are ready to fight and lick Fascism and Hitler wherever they raise their ugly heads.

That's why the Oil Workers in Baytown are organizing today. They want to win for themselves better living conditions, better working conditions, better wages,—a better change (chance) for their kids, and they want to lick Hitler and all his fascist collaborators.

They want to win wage equalizations in *ninety* classifications instead of just the *nine* the company asked the War Labor Board to grant right at the time the union turned its membership cards over to the NLRB and demanded that it [fol. 178] order an election.

They want a more adequate safeguard from the effects of the fifteen tons of sulphur dioxide that daily go into the air in Baytown than the little "Stink and poison proof" office that Humble is building at the acid plant.

They don't want to have to sign that "Yellow Dog" bond that shift supervisor Charlie Blinka tried to force on the gangers and helpers on the graveyard shift a couple of weeks ago.

More than that, they don't want the Standard Oil Company of New Jersey, of which Humble is a subsidiary, to be making any more phoney deals to defeat America and democracy with the Nazi outfit and German Corporate Trust, the I. G. Farben Industries.

Humble workers are all set to fight that kind of fascism.

What I mean is this. You work for the Humble Oil Company. The Humble Oil Company is owned by the Standard Oil Company of New Jersey, which made a deal with the Nazis to withhold from the United States certain valuable secrets about the manufacture of synthetic rubber.

[fol. 179] The Standard Oil Company of New Jersey is owned by interests on Wall Street who have offices down in the lower tip of Manhattan Island overlooking New York Harbor.

They have their headquarters in New York and their hindquarters are spread all over the world.

In order to fight that kind of outfit, you've got to have help. So you are affiliating yourselves with a CIO Union whose members work in the same industry all over this country. And they in turn are supported by five million other CIO members employed in scores of other industries.

And I can personally assure you here tonight that you have and will continue to have the wholehearted and vigorous support of more than one million automobile and aircraft workers who are members of the largest Union in the world—the UAW-CIO, of which I have the honor to be president.

Now, I want to take up the question of Free speech.

You've got a law here in Texas—a new law—which says that a person can't ask other people to join a Union in this state unless he is licensed to do so by the secretary of state. They have almost identical laws—also new ones—in Colorado, Kansas, Alabama and Florida.

[fol. 180] Under that law, they say that not I, nor any other American citizen, can ask you to join a union without the risk of paying a \$500 fine and spending 60 days in the hoosegow.

I have said earlier here tonight that more and more Texas workers are joining the CIO every day. And it is my firm conviction that that development is welcomed by a vast majority of the citizens of Texas. It is true it is *not* welcomed by a small handful of citizens—of Texas and other places—citizens like the men who manage the Humble Oil Company and their bosses in New York who manage the Standard Oil Company of New Jersey. And they were able to persuade enough members of the Texas State Legislature to pass the law.

Now, I am in favor of one thing—that every person elected to the legislature of Texas or Michigan or Colorado or any other state, or to the Congress of the United States be required, before he takes office, to read the constitutions of his own state and of the United States.

I know that most of them don't do that.

I know that the Texas legislators who voted for that law must not have read the Texas constitutions.

I have.

[fol. 181] I made a point of doing it. And in it—in the eighth section of Article One—I find this statement and I quote:

“Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; *and no law shall ever be passed curtailing the liberty of speech or of the press.*” End of quote.

Texas legislators ought to know that. It's important to their business.

They ought to know too about a decision of the United States Supreme Court on the question of *licensing* the right to speak and publish. In the case of *Lovell versus the City of Griffin, Georgia*, the court said and I quote:

"The ordinance strikes at the very foundation of the freedom of the press by subjecting it to license—The struggle for the freedom of the press was primarily directed *against* the power of the licensor * * * And the liberty of the press became initially a right to publish *without* a license what former could be published only *with* one." End of quote. [fol. 182] They ought to know also about a decision of the Texas Supreme Court on the Validity of another Texas law. The Legislature passed a law here back in 1909 which said that if an employer fired an employe, he must, on the employe's written request, provide in writing the reasons for his discharge. Now, the Supreme Court of the State of Texas declared that this law was unconstitutional because the right of free speech and free press carried with it the right of a citizen *not* to speak. Now, are the legislators and the law enforcement agencies of Texas going to tell me and you that they have two kinds of law down here? One kind for people who hire other people to work for them, and another kind for people like me and you who work for our living? Are they going to say and insist that one group has the right of free speech and the other group does not have that right?

I don't think so.

You know, I started out in life to be a minister. For two years I studied at Wooster College in Ohio. I had to quit college because of financial reasons and learn to be a welder in order to make a living. Since coming in to this situation, I've wondered what would have happened if I had [fol. 183] become a minister instead of a labor organizer. Suppose I had a church here in Texas. And the Legislature told me it was all right for me to preach the word of God, but that it was against the law for me to ask people to join the church. Do you think that, as a minister, I should respect such a law and refrain from asking people to join the church?

That's the kind of a law Hitler has in Germany. But brave men, like Pastor Niemöller, defied his law. I think

that would be *my* attitude as a preacher. I *know* it's my attitude as an elected officer of my union.

Thank God, in America, we have a system of courts whereby an honest citizen can question a law and have it adjudicated fairly instead of being thrown into a concentration camp without any kind of trial or hearing.

Some people have suggested to me that it's none of my business what kind of laws they have in Texas. They tell me I should stay up in Detroit and keep my nose out of this state.

Well, I want to say here and now that it *is* of great concern to me—it's of concern to me as the president of a union which has members here, as a member of that union [fol. 184] myself, as the head of a family and as a citizen of the United States.

The Supreme Court has something to say about that too. In the case of *Thornhill versus Alabama*, they say this, and I quote:

"The health of the present generation and of those yet unborn may depend on these matters, and the practices in a *single* factory may have economic repercussions upon a whole region and affect widespread systems of marketing—Labor relations are *not* matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us *indispensable* to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society." End of quote.

But I don't have to go to the Supreme Court.

We're in a war today. As our President and Commander-in-Chief has said, we're *all* in it, all of the way. It doesn't mean that just the people of Michigan are in it, or just the people of Texas or of Arkansas or Nebraska—but all the people in all the 48 states in these United States. [fol. 185] *It is a war to preserve our democratic way of life.*

And the organization which I represent—the UAW-CIO—won't take a back seat to any organization in this country in contributions to this war effort.

In the first place we've contributed nearly 400,000 of our own members—men who used to work in the auto shops who are now in uniform and on the fighting fronts in every theater of this war.

We've bought more war bonds than any other single organization in this country.

We've given more blood to the Red Cross to preserve the lives of our brothers and fellow citizens who are doing the fighting.

We've contributed more to the War Chests all over the country than any other organization.

And we've put into the hands of our soldiers, sailors, marines and fliers more guns, tanks, trucks, airplanes, jeeps and ammunition than any of these politicians, who go around slandering labor, ever realized it was possible to produce. We're still putting them out and we're going to keep on putting them out in ever increasing quantities [fol.186] until Hitler and Hirohito and their kind are wiped off the face of the earth forever.

But I want to say this—

While we're prosecuting this war, fighting the enemy, producing the materials to fight it with, and putting everything we've got into it, we're not going to let any selfish interests here in America—in Texas or anywhere else—sneak behind our backs and put on the people of this country the same kind of restrictions and bans that Hitler put on the German people.

And we're going to fight it, tooth and nail, wherever that happens, because we know if it can happen in the legislatures of Texas and five other states, it can happen in Michigan, and if it can happen in the states then it can happen in Congress—and even if we lick Hitler, we will have lost the very things we are fighting for.

I was told yesterday, for example, that your good sheriff, Brother Neal Polk, said I shouldn't come in here stirring up trouble. He said we've got a war on and I ought to wait until after the war's over to do anything about this law because things are too critical right now. Well, [fol.187] I want to tell Sheriff Polk—and I understand I'm going to get to meet him tonight—that the people who stirred up the trouble, if there is any trouble, are the corporations that got this infamous law passed while there's a war going on. And I've got some things to say—and a lot of other people have got things to say in Texas—that can't wait until the war's over. It would be too late then. So I'm having *my* say now and if Sheriff Polk wants to arrest me for saying it, I'm going to submit peaceably

to arrest and we'll just quietly go to court and see what happens.

Americans have always stood for democracy—the great mass of the people have, and the men that have done our fighting. We have fought other wars for the principle of democracy.

The men who starved and bled and froze to death at Valley Forge didn't die so that a small group of people could rule this country and tell all the other people that they couldn't talk and say what they wanted to say unless they had a license.

Those great heroes in the Alamo who stepped across the line Colonel Travis drew with his sword didn't die in order [fol. 188] that the Texas legislature could pass a law saying that the people of this state couldn't say what they wanted to say unless they had a license.

The men that fell in France and still lie buried in Flander's field didn't die for that purpose.

And the American boys who are fighting and dying today all over the world aren't fighting and dying for that purpose.

I know they are not because I know one of them who has died.

I want to tell you something about him.

His name is Charlie Varos.

It could be Tony Caruso or Fritz Muller or just plain Bill Smith from Houston.

Charlie Varos was born in this Country. His parents were Greek. He worked with me at the Chrysler plant in Detroit.

Charlie Varos was a good mechanic. He was a good union man. And he became a damn good soldier.

He was killed in action a few weeks ago in Sicily.

Charlie was in a tank corps. The Nazis and the Fascists [fol. 189] blew up three tanks that he was driving. The third time that happened, Charlie was injured so bad that they wanted to muster him out of the Army and send him home. But Charlie wouldn't go for that. He told them if they wouldn't let him drive a tank and fight, he was still able to drive an ambulance.

So they gave him an ambulance and in Sicily the Nazis dropped a bomb on his ambulance and killed Charlie Varos.

That's the kind of soldiers we turn out in the CIO.

I have in my office in Detroit a series of letters that Charlie wrote to me. They are among my most treasured possessions. They aren't masterpieces—from the standpoint of literary style. Charlie never had much education, except what he got in the shop and in the union.

But those letters he wrote tell the story of every fighting man in the United Nations today—the story of the fighting men at Valley Forge, at the Alamo and in France in 1917 and 1918.

That story is this: We want you guys at home to work [fol. 190] like Hell to give us the stuff we need; don't stop working, don't let anything interfere with production—and at the same time, take care of our interests there; don't let anybody pull any fast ones that will destroy this democracy we are fighting for; don't let selfish, reactionary people take advantage of us while we're gone.

I'm going to do my best to do what Charlie Varos told me in his letters. And I know if he were still alive, he would say, "Tom, you go to Houston and make that speech and ask those people to join the Oil Workers union—and you guys get rid of that law in Texas and those other states before we get back."

That's one reason I'm here tonight.

I don't like to read a speech. I hardly ever *do* read one. But when I got here and found all these complications, I decided to write this speech out so nobody could say I said something different from what I said.

That's one thing.

And I also read in the papers here a statement from the Attorney-General's office that said if I just told you good people the reasons I *thought* you ought to join a union that wouldn't necessarily be a violation of the law.

[fol. 191] I didn't come here to break the law. I came here to make this speech and to ask you to join the union. But since the issue has arisen I don't want anybody to say that I'm evading it—and I don't want anybody else involved to have an opening to get out without making a test of this law.

So I went to our union attorneys in Houston and I told them I want to ask those people to join the union in such a way that there will be no room whatsoever for any law enforcement agency to avoid a test of the constitutionality of the law.

They gave me a copy of the law, which I read. I am convinced that the provision of the law which prohibits a person from soliciting members in a union is unconstitutional. So I worked out this statement to read here to you tonight:

I was elected in 1939 to be president of the UAW-CIO. In the same year I was elected a Vice-President of the CIO. I am speaking here tonight in that capacity.

As a Vice-President of the CIO, one of my duties is to help the CIO unions in this state to organize all the industries [fols. 192-195] in Texas that are now unorganized because we have learned that the wages and working conditions in one industry affect the wages and working conditions in another industry. That is why the oil workers in this area have organized into the Oil Workers International Union; the auto and aircraft workers into the UAW-CIO; the steel workers into the United Steel Workers; the maritime workers into the National Maritime Union—and all of them have affiliated with the CIO.

Therefore as Vice President of the CIO and as a union man, I earnestly ask those of you who are not now members of the Oil Workers International Union to join now. I solicit you to become a member of the union of your fellow workers and thereby join hands with labor throughout this country in all industries. In such a united organization we can work together with our organized strength to protect and extend the democracy of this country, to improve our living and working conditions, to give ourselves an effective voice in the affairs of the nation and in the conduct of our respective jobs, to work for the common good of all the people, and to wipe Hitler and fascism from the face of the earth.

Thank you, and good night.

[fols. 196-197] [Caption omitted]

[fol. 198] IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS,
53RD JUDICIAL DISTRICT

No. 69,164

STATE OF TEXAS

vs.

R. J. THOMAS

PLAINTIFF'S ORIGINAL PETITION AND COURT'S FIAT—Filed
September 22, 1943

To the Honorable Judge of said Court:

Now comes the State of Texas, acting by and through its Attorney General, Gerald C. Mann, as plaintiff and complains of R. J. Thomas as defendant and shows:

I

The plaintiff brings this suit under the authority of Section 12 of House Bill No. 100, Acts of the 48th Legislature, 1943. The defendant is a non-resident of the State of Texas and he is temporarily visiting in Houston, Harris County, Texas, where he may now be served with process.

II

The defendant is a Member and President of the United Automobile, Aircraft and Agricultural Implement Workers of America, a labor union commonly known as the U. A. W. The U. A. W. is affiliated with the Congress of Industrial Organizations, a labor union commonly known as the C. I. O. The C. I. O. maintains its principal office in the City of Washington, District of Columbia, and the U. A. W. maintains its principal office in Detroit, Michigan.

The C. I. O. is the parent organization of many industrial unions as distinguished from purely trade unions, and one of such industrial unions affiliated with the C. I. O. is the Oil Workers International Union, a labor union commonly known as the O. W. I. U. The O. W. I. U. maintains its principal office in Fort Worth, Tarrant County, Texas. The [fol. 199] O. W. I. is composed of many local unions in Texas, one of which is Local No. 1002, which has its prin-

incipal office in Harris County, Texas. The O. W. I. U. and Local No. 1002 are each labor unions within the meaning of said House Bill No. 100.

III

The defendant is paid a salary as President of the U. A. W. and is authorized by reason of that office and the duties imposed upon him as such officer to solicit membership in the U. A. W. and in the O. W. I. U. and other labor unions affiliated with the C. I. O. The defendant receives pecuniary and financial consideration for performing his duties as Vice-President of the C. I. O. and part of his duties as such officer consists in soliciting memberships in labor unions like the O. W. I. U. which are affiliated with the C. I. O.

The Plaintiff alleges that said defendant by reason of his occupancy of said offices and the duties and authority incidental to his representation of the U. A. W. and C. I. O. for which he receives financial and pecuniary consideration is, when he solicits memberships in a C. I. O. labor union or members for a C. I. O. labor union, a "labor organizer" within the meaning of said House Bill No. 100.

The said defendant does not have and has not applied for an organizer's card as required by Section 5 of said House Bill No. 100.

IV

The plaintiff would show that the defendant is scheduled to speak at a mass meeting to be held at the City Hall in Pelly, Harris County, Texas, on Thursday night, September 23, 1943, and that at said meeting the defendant will solicit memberships in a labor union and members for a labor union without an organizer's card as required by said House Bill No. 100. The mass meeting referred to has been called and is being sponsored by the C. I. O. for the purpose [fol. 200] of organizing the employees of the Humble Oil & Refining Company, oil refining plant at Goose Creek, Texas, into Local Union No. 1002 of the Oil Workers International Union. The defendant has publicly announced his intention of addressing said mass meeting and soliciting those present who are employees of the Humble plant referred to and are not members of the union to join said Local No. 1002 and said defendant has further announced that he further intends at said time and place to make such solicitations

without an organizer's card as required of labor organizers under House Bill No. 100 of the Acts of the 48th Legislature, 1943, and "to get himself arrested" in order to test said law.

V

The plaintiff would show that if said defendant carries out his publicly announced intentions, as above alleged, that such acts on his part will constitute a violation of the expressed prohibitions of said House Bill No. 100. The plaintiff further shows that said defendant has come to Texas from Detroit, Michigan, to take part in an organizational campaign for said Local No. 1002 of the O. W. I. U. and that he will stay in Texas several weeks and continue to solicit memberships in said labor union without an organizer's card, as required by law, unless restrained from doing so by order of this Honorable Court.

The plaintiff further shows that the defendant as President of U. A. W. and Vice-President of C. I. O. is engaged in the business of organizing employees of industrial plants in Texas and throughout the United States into labor unions affiliated with the C. I. O. and that if he makes the solicitations, as threatened, without an organizer's card from the Secretary of State as required by said House Bill No. 100, he will be flouting the Texas law and acting in defiance of it.

The plaintiff further shows that there is not sufficient time before defendant makes the threatened speech for a [fol. 201] notice to be served on him and returned to this Court; that the Assistant Attorney General who is the affiant herein talked with Mr. Earnest Goodman, the Attorney for the defendant, in Houston, Texas, at 1:30 P. M. this 22nd day of September, 1943, and advised him that this application for temporary restraining order would be filed in Travis County on this date and offered to have an order to show cause entered and the matter set down for hearing for tomorrow, Thursday, September 23, 1943, and said attorney for defendant stated that he did not desire such a hearing and would not come to Austin for the hearing if the matter was set down for that date.

Wherefore, Plaintiff prays for a temporary restraining order against said defendant, enjoining and restraining him from violating the provisions of said House Bill No. 100 by soliciting memberships in a labor union or members for a labor union without an organizer's card, as is required by

Section 5 of said Act and that a temporary injunction issue within ten days and that upon final hearing said injunction be made permanent and plaintiff prays for its costs of court and general relief.

Gerald C. Mann, Attorney General of Texas; Fagan Dickson, Assistant Attorney General, Attorneys for Plaintiff, State of Texas.

Duly sworn to by Fagan Dickson. Jurat omitted in printing.

[fol. 202]

FIAT

On this, 22nd day of September, 1943, there was presented to me the plaintiff's sworn petition for temporary restraining order in the above styled and numbered case and it appearing that the defendant Thomas has announced publicly to the press that he will violate the Texas law relating to soliciting memberships in a labor union without an organizer's card at a meeting to be held Thursday night, September 23, 1943, at Goose Creek, Harris County, Texas, and it appearing from said petition that said defendant is a "labor organizer" within the meaning of that term as used in House Bill No. 100, Acts of the 48th Legislature, 1943, and that said defendant will violate said law unless restrained from doing so, and it further appearing that there is not sufficient time for a notice to the defendant and a hearing on this application before the date of the defendant's threatened violation of the law and that defendant's attorney, Mr. Earnest Goodman, has stated that he will not attend a hearing if the matter is set down for hearing on September 23, 1943, and the Court having found from [fol. 203] the sworn petition and statements of counsel that irreparable injury will result to plaintiff unless the relief is granted and that plaintiff is entitled to the relief prayed for;

It is, therefore, Ordered, Adjudged and Decreed that R. J. Thomas be and he is hereby restrained and enjoined from soliciting memberships in Local Union No. 1002 of the O. W. I. U., and members for Local Union No. 1002 of the O. W. I. U. and from soliciting memberships in any other labor union affiliated with the C. I. O. and members of any other labor union affiliated with the C. I. O. while said

defendant is in Texas without first obtaining an organizer's card as required by law.

It is Ordered that this fiat and a copy of plaintiff's petition be served forthwith on said defendant Thomas and that he be and appear before this Court at 10:00 A. M. on the 25th day of September, 1943, in the Court House in Travis County, Texas, and then and there show cause why a temporary injunction shall not issue as prayed for.

This temporary restraining order is issued at 4:00 P. M., Wednesday, September 22, 1943, and unless extended it shall expire within ten days from this date.

J. Harris Gardner, Judge, 53rd District Court, Travis County, Texas.

[File endorsement omitted.]

[fol. 204] IN THE 53RD DISTRICT COURT OF TRAVIS COUNTY,
TEXAS

[Title omitted]

MOTION FOR CONTEMPT—Filed September 24, 1943

To the Honorable Judge of Said Court:

Now comes the State of Texas, acting by and through its Attorney General Gerald C. Mann, and respectfully shows the court the following:

I

That on September 22, 1943, this Honorable Court entered its order in the above styled and numbered cause directing the clerk of this court to issue a writ of temporary restraining order and notice to the defendant R. J. Thomas, the Court's fiat reading as follows:

"On this, 22nd day of September, 1943, there was presented to me the plaintiff's sworn petition for temporary restraining order in the above styled and numbered case and it appearing that the defendant Thomas has announced publicly to the press that he will violate the Texas law relating to soliciting memberships in a labor union without an organizer's card at a meeting to be held Thursday night, September 23, 1943, at

Goose Creek, Harris County, Texas, and it appearing from said petition that said defendant is a "labor organizer" within the meaning of that term as used in [fol. 205] House Bill No. 100, Acts of the 48th Legislature, 1943, and that said defendant will violate said law unless restrained from doing so, and it further appearing that there is not sufficient time for a notice to the defendant and a hearing on this application before the date of the defendant's threatened violation of the law and that defendant's attorney, Mr. Earnest Goodman, has stated that he will not attend a hearing if the matter is set down for hearing on September 23, 1943, and the court having found from the sworn petition and statements of counsel that irreparable injury will result to plaintiff unless the relief is granted and that plaintiff is entitled to the relief prayed for;

"It Is, Therefore Ordered, ~~Adjudged~~ And Decreed that R. J. Thomas be and he is hereby restrained and enjoined from soliciting memberships in Local Union No. 1002 of the O. W. I. U. and members for Local Union No. 1002 of the O. W. I. U. and from soliciting memberships in any other labor union affiliated with the C. I. O. and members of any other labor union affiliated with the C. I. O. while said defendant is in Texas, without first obtaining an organizer's card as required by law.

"It Is Ordered that this fiat and a copy of plaintiff's petition be served forthwith on said defendant Thomas and that he be and appear before this Court at 10:00 A. M. on the 25th day of September, 1943, in the court house in Travis County, Texas, and then and there show cause why a temporary injunction shall not issue as prayed for.

[fol. 206] "This temporary restraining order is issued at 4:00 P. M., Wednesday, September 22, 1943, and unless extended it shall expire within ten days from this date.

(Signed) J. Harris Gardner, Judge, 53rd District Court, Travis County, Texas."

On the same day, to-wit, September 22, 1943, the Clerk of this Court issued a writ of temporary restraining order and notice to said R. J. Thomas and said writ was served on said R. J. Thomas in Houston, Harris County, Texas, on the

23rd day of September, 1943 at 10:00 A. M. by Neal Polk, Sheriff of Harris County, Texas, and at the same time said R. J. Thomas was served with a citation in said cause containing a true and correct copy of the plaintiff's original petition and the Court's fiat, and the said R. J. Thomas knew, has known and now knows and did know at the time of the hereinafter violations the terms and contents of said temporary restraining order and the plaintiff's petition in this cause.

II

The defendant R. J. Thomas knowingly and wilfully and without justification or excuse violated the aforesaid order of this court and the writ of temporary restraining order as follows, to-wit:

(1) That on the 23rd day of September, 1943, at the City Hall in Pelly, Harris County, Texas, the said R. J. Thomas, without procuring an organizer's card as required by law of labor organizers and without making application to the Secretary of State for such a card, did at said time and place solicit Pat O'Sullivan, a resident of Bay Town, Texas, and an employee of the Humble Oil & Refining Company's plant at Bay Town to join a local union of the Oil Workers International Union, which said union is affiliated with the Congress of Industrial Organizations of which said R. J. [fol. 207] Thomas is Vice-President. The said O'Sullivan at said time was not a member of the local union of the Oil Workers International Union and said R. J. Thomas then and there did take his application to become a member, all in violation of this court's order and the writ of temporary restraining order issued pursuant thereto.

(2) At said time and place said R. J. Thomas in violation of this court's order did openly and publicly solicit an audience of approximately 300 persons, many of whom were not members of the Oil Workers International Union or any other C. I. O. union, to then and there join and become members of said Oil Workers International Union. Said R. J. Thomas at said time and place stated publicly that he made said solicitations in his capacity as Vice-president of the C. I. O. and that he was duly authorized by the said C. I. O. to solicit memberships in the Oil Workers International Union, and that it was his duty to assist in the organization of the Oil Workers International Union which

is affiliated with the C. I. O. The said R. J. Thomas at said time and place publicly solicited all employees of the Humble Oil & Refining Company's plant at Bay Town, Texas, many of whom were present at said meeting and were not members of the Oil Workers International Union, to join the local Oil Workers International Union at that refinery, said Oil Workers International Union being affiliated with the C. I. O. At said time and place said R. J. Thomas did not have and had not applied for an organizer's card, as required by Section 5 of House Bill No. 100, Acts of the 48th Legislature of 1943.

Plaintiff states that the acts of R. J. Thomas above alleged were in open and flagrant violation of the order of this court and the writ issued pursuant thereto and were knowingly made by said defendant in violation of this court's order and writ and said acts constitute contempt of [fol. 208] this court and should be punished by appropriate order.

(3) Plaintiff would further show that said R. J. Thomas is a non-resident of the State of Texas and that he may leave the State before a hearing can be had on this motion unless an attachment is issued for the person of said R. J. Thomas and he is taken into custody, pending a hearing on this motion.

Wherefore, the State of Texas prays that the defendant R. J. Thomas, be held and punished for contempt of this court and its order and plaintiff further prays that an attachment be issued directing the Sheriff of Travis County to take said R. J. Thomas into his custody and bring him before this court immediately to then and there show cause why he should be held in contempt.

Gerald C. Mann, Attorney General of Texas; Jesse Owens, Assistant Attorney General; Fagan Dickson (Signed), Assistant Attorney General, Attorneys for Plaintiff, State of Texas.

[fol. 209] *Duly sworn to by Jesse Owens. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 210] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER FOR ATTACHMENT—September 24, 1943

On this 24th day of September, 1943, came on to be heard the Plaintiff's verified motion for contempt, filed in this cause on this date, by the plaintiff against the defendant, R. J. Thomas. And it appearing to the Court that the facts set forth in plaintiff's Verified Motion, entitle the Plaintiff to issuance of attachment as prayed for;

It is therefore Ordered, Adjudged and Decreed that the Clerk of this Court be, and he is hereby directed to forthwith issue a Writ of Attachment for R. J. Thomas, directing any Sheriff or any Constable within the State of Texas, to bring the person of the said R. J. Thomas before this Court in the Courthouse of Travis County, Texas, instantler to then and there show cause why he should not be held in contempt of this Court.

J. Harris Gardner, Judge, 53rd District Court, Travis County, Texas.

[File endorsement omitted.]

[fol. 211] IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

[Title omitted]

MOTION TO DISMISS—Filed September 25, 1943

To the Honorable Judge of said Court:

Now comes the above named defendant, R. J. Thomas, by his attorneys Mandell & Wright and Ernest Goodman, and moves this Honorable Court to dismiss the complaint herein filed, to dissolve the Temporary Restraining Order herein issued and to quash the contempt proceedings herein for the following reasons:

1

The Court has no jurisdiction over this defendant.

2

The Court has no jurisdiction over the subject matter as disclosed in said complaint.

3

The complaint does not state a cause of action cognizable in a court of equity.

4

House Bill No. 100, Section 12, does not authorize or give jurisdiction to this Court to issue the restraining order herein issued, or to issue the temporary or permanent injunction [fol. 212] herein prayed for.

5

The Court has no authority or jurisdiction to require defendant to obtain an organizer's card under the provisions of House Bill No. 100 as a prerequisite to soliciting memberships in or members for Local Union 1002 of the OWIU.

6

The Court has no authority or jurisdiction to require defendant to obtain an organizer's card under the provisions of House Bill No. 100 as a prerequisite to soliciting memberships in or members for any other labor union affiliated with the CIO.

7

This Court has no authority or jurisdiction to issue the restraining order issued in this case, ex parte.

8

No threat of irreparable injury to any property or civil rights exists or is disclosed by the complaint, which would justify the issuance of a restraining order or an injunction.

9

The Court had no jurisdiction or authority to issue said temporary restraining order because the complaint does not allege or disclose specific facts showing immediate and irreparable injury, loss or damage resulting to the plaintiff before notice could be served upon defendant and a hearing had thereon as provided by Rule 680^c of Texas Rules of Civil Procedure.

[fol. 213]

10

The temporary restraining order issued herein is void because it does not define the injury to plaintiff and it does

not state why such injury is irreparable, nor why the order was granted without notice, as provided by Rule 680 of Texas Rule of Civil Procedure.

11

The Court had no authority or jurisdiction to issue the temporary restraining order hereinbefore issued and has no authority or jurisdiction to issue the temporary or permanent injunction herein prayed for; and House Bill 100, Section 5, confers no such authority and jurisdiction upon the Court, and confers no right upon the plaintiff and places no obligation or responsibility upon the defendant for the reason that said House Bill 100, Section 5, and said temporary restraining order and any temporary or permanent injunction issued by the Court as prayed for herein does and would violate the following constitutional provisions of the constitutions of the State of Texas and of the United States.

Article 1, Section 8, United States Constitution, providing that Congress shall regulate commerce among the several states; and

Article 1, Section 10, providing that no state shall make laws impairing the obligation of contract.

Article VI, United States Constitution, providing the Constitution and laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and

Amendment 1 providing freedom of speech shall not be abridged and the people shall have the right to peacefully assemble and to petition the government for a redress of grievances, secured against state abridgement by Section 1 of the 14th Amendment; and

[fol. 214] Amendment 9 providing the enumeration in the Constitution of certain rights shall not be construed to deny others retained by the people secured against abridgement by Section 1 of the 14th Amendment; and

Amendment 14, Section 1, United States Constitution, providing no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

Article 1, Section 8, Constitution of the State of Texas,

guaranteeing that every person shall be free to speak, write, or publish opinions, but be responsible for abuse of that liberty.

Article 1, Section —, Constitution of the State of Texas, providing that in any criminal prosecution the accused shall have the right to demand the nature and cause of the accusations against him.

Article 1, Section 16, Constitution of the State of Texas, providing that no bill of attainder, ex post facto law, retroactive law or any law impairing the obligations of contract shall be made.

*Article 1, Section 17, Constitution of the State of Texas, providing that no irrevocable or uncontrollable grant of special privileges or immunities shall be made.

Article 1, Section 19, Constitution of the State of Texas, providing that no citizen of a State shall be deprived of life, liberty, property, or immunities without due process of law.

Article 1, Section 27, Constitution of the State of Texas, providing that the citizens of a State shall have the right, in a peaceable manner, to assemble together for their common good.

Article 1, Section 29, Constitution of the State of Texas, guarding against transgressions of the Bill of Rights contained in Article 1 of the Constitution of the State of Texas, and providing that said rights shall forever remain inviolate, and that all laws contrary thereto shall be void.

[fol. 215] Article III, Section 56, Constitution of the State of Texas, providing that the Legislature shall not, except as otherwise provided in the Constitution, pass any local or special law regulating labor.

Article III, Section 57, Constitution of the State of Texas, providing for certain notice and publication in the passage of all local and special laws.

Wherefore, premises considered, plaintiff, R. J. Thomas, prays that the temporary restraining order herein issued be dissolved, that the complaint be dismissed, and that the contempt proceedings herein be quashed.

Mandell & Wright, by Herman Wright, Attorneys
for defendant, 501 State National Bank Bldg.,
Houston 2, Texas. Ernest Goodman, Attorney for
Defendant, 501 State National Bank Bldg., Hous-
ton 2, Texas.

[File endorsement omitted.]

[fol. 216] IN THE 53RD DISTRICT COURT OF TRAVIS COUNTY,
TEXAS

No. 69,164

STATE OF TEXAS

vs.

R. J. THOMAS

TEMPORARY INJUNCTION—Filed September 27, 1943

Be it remembered that on this the 25th day of September, A. D. 1943, there came on for trial, in the above entitled and numbered cause, the plaintiff's application for a temporary restraining order and injunction, seeking to have the defendant, R. J. Thomas, restrained and enjoined from soliciting membership in a labor union or members for a labor union without an organizer's card as required by law. The plaintiff appeared by and through its Attorney General, Gerald C. Mann, and the defendant, having been duly cited, appeared in person and by his attorney and answered herein by filing his general denial.

Be it further remembered that in the above entitled and numbered cause on the 22nd day of September, A. D. 1943, this Court granted a temporary restraining order without notice, restraining and enjoining the defendant, R. J. Thomas, from soliciting membership in local union No. 1002 of the O. W. I. U. and members for local union No. 1002 of the O. W. I. U. and from soliciting membership in any other labor union affiliated with the C. I. O. and members of any other labor union affiliated with the C. I. O. while said defendant is in Texas, without first obtaining an organizer's card as required by law. That on the 23rd day of September, A. D. 1943, in Harris County, Texas, the defendant [fol. 217] was duly served with a copy of said restraining order and a copy of plaintiff's petition and cited to appear before this Court at 10:00 A. M., on the 25th day of September, A. D. 1943, in the Courthouse in Travis County, Texas, and then and there show cause why a temporary injunction should not issue as prayed for by the plaintiff.

The Court having heard all pleadings filed herein and evidence and argument of counsel is of the opinion that the plaintiff is entitled to a temporary injunction as prayed for in its petition.

It is therefore Ordered, Adjudged and Decreed that the defendant, R. J. Thomas, be and he is hereby restrained and enjoined from soliciting memberships in local union No. 1002 of the O. W. I. U. and members for local union No. 1002 of the O. W. I. U. and from soliciting memberships in any other labor union affiliated with the C. I. O. and members of any other labor union affiliated with the C. I. O. while he is in Texas, without first obtaining an organizer's card as required by law, until the further orders of this Court.

It is further ordered that this temporary injunction shall be in full force and effect until this cause is tried on its merits.

J. Harris Gardner, Judge Presiding.

[File endorsement omitted.]

[fol. 218] IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

[Title omitted]

ANSWER TO COMPLAINT—Filed September 25, 1943

Now comes R. J. Thomas, by and through his attorneys, Mandell & Wright and Ernest Goodman, and in answer to the complaint herein filed, says:

I

Answering Section I, defendant denies that plaintiff has any authority, under Section 12 of House Bill No. 100, Acts of the 48th Legislature, 1943, to file said complaint. Defendant admits the remaining allegations in said paragraph.

II

Answering paragraph 1, Section II, defendant shows that the Congress of Industrial Organizations is a voluntary and unincorporated association, composed of numerous voluntary and unincorporated labor unions. Defendant admits the remaining allegations in said first paragraph.

Answering paragraph 2, Section II, defendant shows that the labor unions which are affiliated to the C. I. O. are

classified according to their various trades and industries into separate voluntary unincorporated labor unions. Defendant admits the remaining allegations contained in the said second paragraph.

In further answer to said section, defendant shows that the UAW and the OWIU are organizations and associations of employees including working men and women, in various trades, occupations and industries who have from time to time assembled and associated together and are assembling and associating together for the purpose of organizing themselves into voluntary and unincorporated associations [fol. 219] and for the purpose of forming, joining and assisting their organizations so formed, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and otherwise dealing with their employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment, for their mutual aid and protection and for the purpose, by these and other means, of protecting themselves and improving their working conditions, wages and employment relationships.

Defendant further shows that the members of said unions and other international unions affiliated to the CIO have through their local and national unions associated and assembled and formed the Congress of Industrial Organizations with the objective and purpose of further effectuating all of the foregoing purposes and also to create and encourage a closer federation and cooperation through the organization of industrial union councils respectively, in cities and states; to establish national and international labor organizations based upon the autonomy of each trade or industry; to establish a national congress of all national and international labor organizations; to aid and assist each other; to aid and encourage public support for union members and union-made materials; to secure legislation in the interests of the working people and to influence public opinion by peaceful and legal methods in favor of organized labor and better working and health standards; and to aid and encourage the labor press of America.

III

In answer to paragraph 1, Section III, defendant admits that he is paid a salary as President of the UAW and is

authorized to solicit memberships in the UAW. Defendant denies the remaining allegations in paragraph 1 of Section III.

In answer to paragraph 2, Section III, defendant denies [fol. 220] the allegations contained therein.

In answer to paragraph 3, Section III, defendant admits the allegations contained therein.

IV

Answering Section IV, defendant admits that he was scheduled to speak at a mass meeting at the City Hall at Pelly, Harris County, Texas, September 23, 1943. Defendant shows that said meeting was sponsored by the Oil Workers Organizing Committee for the purpose of organizing the employees of the Humble Oil & Refining Company, oil refining plant at Goose Creek, Texas. Defendant further admits that he had publicly announced his intention of addressing said meeting and of asking workers who were present to join the Oil Workers Union. Defendant denies the remaining allegations in said section.

V

Answering paragraph 1, Section V, defendant denies that he intends to stay in Texas for the purpose of continuing to solicit memberships in a labor union. Defendant shows that he came to Texas, as is hereinafter specifically set forth, for the purpose of speaking at said meeting and to solicit memberships at said meeting, in accordance with an invitation extended to him by the Oil Workers Organizing Committee. Defendant denies the remaining allegations in said paragraph 1.

Answering paragraph 2 and paragraph 3, Section V, defendant denies the allegations contained therein.

Answering paragraph 4 in Section V, defendant shows the facts to be as follows:

Answering paragraph 4 of Section V, defendant denies that Mr. Ernest Goodman advised Mr. Fagan Dickson that he did not desire such a hearing or that he would not come to Austin for the hearing; but defendant avers that Mr. Goodman advised Mr. Dickson that he could not come to [fol. 221] Austin on the day suggested by Mr. Dickson and advised Mr. Dickson that it was up to him to proceed in accordance with what he considered his legal rights to be.

VI

Further answering said complaint, defendant shows:

(a) A complaint was filed by defendant, together with the CIO, the UAW, the OWIU, and other international and local labor unions affiliated with the CIO, and certain of their officers, in the District Court of the County of Travis, State of Texas, in and for the 98th Judicial District, being case No. 68720.

(b) In said complaint, plaintiffs therein sought to restrain the Secretary of State, the Attorney General, and other law enforcing agencies in the State of Texas from enforcing said law, on the ground that said law was unconstitutional under the constitution of the State of Texas and the United States Constitution, and for other reasons.

(c) Defendants in said suit filed an answer seeking, among other things, to dismiss said complaint on the ground, among others, that the court had no jurisdiction to restrain enforcement of said law and upon the further ground that plaintiffs in said complaint had an adequate remedy other than in a court of equity.

VII

In answer to the concluding paragraph in the complaint, defendant denies that plaintiff is entitled to any temporary restraining order or temporary or permanent injunction.

Defendant's answer herein is filed subject to and without waiving the motion to dismiss the complaint and dissolve the temporary restraining order heretofore issued by this court, and still insists on the same. In connection therewith, defendant here and now realleges each and every [fol. 222] paragraph contained in the motion to dismiss and motion to dissolve the restraining order, being paragraphs numbered one to eleven, inclusive, and forming a part hereof as though fully incorporated herein, specifically alleging that by reason of such allegations, the statute invoked against this defendant is void ab initio, unconstitutional and therefore unenforceable, and by reason thereof plaintiff is not entitled to the relief sought.

Wherefore, premises considered, defendant prays that the temporary injunction prayed for by the plaintiff be in all things denied, that plaintiff's complaint be dismissed,

and for all other and further relief as in law and in equity defendant may show himself entitled to receive at plaintiff's cost.

R. J. Thomas, Defendant.

Herman Wright, Mandell & Wright, Attorneys, 501 State National Bank Bldg., Houston, Texas; Ernest Goodman, Attorney, 501 State National Bank Bldg., Houston.

Duly sworn to by R. J. Thomas, et al. Jurats omitted in printing.

[fol. 223]

[File endorsement omitted]

[fol. 224] IN THE 53RD DISTRICT COURT OF TRAVIS COUNTY,
TEXAS

[Title omitted]

JUDGMENT IN CONTEMPT—September 25, 1943

Be it Remembered, that on this the 25th day of September, A. D. 1943, there came on for trial the motion of the State of Texas in the above entitled and numbered cause, seeking to have R. J. Thomas held in contempt of court, for violating this court's temporary restraining order heretofore granted on the 22nd day of September, A. D. 1943, in the above entitled and numbered cause, and it appearing to the court that the same is in the nature of an information for constructive contempt of this court, and the defendant, R. J. Thomas, having been duly served with a copy of said temporary restraining order, and having duly waived service of the writ of attachment to appear and show cause why he should not be held in contempt of this court, appeared in person and by his attorney and the State appeared by and through the Attorney General of Texas, and all parties having announced ready for trial and the court having heard the pleadings and evidence is of the opinion and so finds that the defendant, R. J. Thomas, was on the 23rd day of September, A. D. 1943, a labor organizer for pecuniary consideration and that he had not applied for an organized card as required by Section 5 of House Bill No. 100, and that he, the said R. J. Thomas,

did in Harris County, Texas, on the 23rd day of September A. D. 1943, violate this court's temporary restraining order heretofore issued injoining and restraining him, the said [fol. 225] R. J. Thomas, from soliciting members to join the Oil Workers International Union, said union being affiliated with the Congress of Industrial Organizations without first having applied to the Secretary of State, of the State of Texas, for an organizer's card as required by law.

It is Therefore Ordered, Adjudged and Decreed by the court that the defendant, R. J. Thomas, is guilty of contempt of this court as charged in the information filed herein, and it is the judgment of this court that the defendant, R. J. Thomas, is so in contempt of this court for the violation of the law and of the order of this court on the 23rd day of September, A. D. 1943, and he is so adjudged, and his punishment is hereby assessed at imprisonment in the county jail of Travis County, Texas, for a period of three days and a fine of \$100.00.

It is Therefore Ordered, Adjudged and Decreed by the court that the State of Texas do have and recover from the defendant, R. J. Thomas, a fine in the amount of \$100.00, and all costs of this proceeding, and that execution may issue against the property of said defendant for the amount of said fine and costs, and that a capias shall forthwith issue herein, commanding the sheriff to arrest the said defendant, R. J. Thomas, to place him in jail in Travis County, Texas, and there safely to keep him for a period of three full days from the date hereof and until said fine and costs are fully paid or until said fine and costs are satisfied by confinement in the said jail for the period of time that will satisfy the same at the rate allowed by law.

J. Harris Gardner (Signed). Judge Presiding.

[File endorsement omitted.]

[fol. 226] IN THE 53RD JUDICIAL DISTRICT COURT OF TRAVIS
COUNTY, TEXAS

[Title omitted]

DEFENDANT'S ANSWER TO STATE'S MOTION FOR COMMITMENT
FOR CONTEMPT—Filed September 25, 1943

To the Honorable Judge of Said Court:

Now comes the above named defendant, R. J. Thomas, by his attorneys, Mandell & Wright, and Ernest Goodman, and in answer to the application of the State of Texas to hold the defendant in contempt of court for having violated the temporary restraining order heretofore issued herein would show the Court as follows:

1. Defendant alleges that he is not guilty of the contempt alleged against him by the State of Texas.

2. Defendant denies each and every allegation made by the State of Texas in its affidavit and pleadings in connection with the contempt proceedings.

3. Defendant incorporates herein as fully and completely as if copied herein in full all of the allegations contained in his motion to dismiss the complaint herein, to dissolve the temporary restraining order, and to quash the contempt proceedings herein, said allegations being contained in Paragraphs Numbers Numbers One through Eleven thereof.

Ernest Goodman, Herman Wright, Attorneys for
Defendant.

Duly sworn to by R. J. Thomas. Jurat omitted in printing.

[fol. 227] [File endorsement omitted.]

[fol. 228] IN DISTRICT COURT OF TRAVIS COUNTY

COMMITMENT—Issued September 25, 1943, Served September 25, 1943, Filed September 27, 1943

The State of Texas, to the Sheriff of Travis County,
Greeting:

You Are Hereby Commanded to take into custody and commit to the jail of your County R. J. Thomas who was,

on the 25th day of Sept. 1943 convicted before the District Court of Travis County of the offense of contempt of court, and his punishment assessed at three full days in jail and fined in the sum of One Hundred Dollars, and 5.25 Dollars-costs, and him safely keep until said fine and costs, amounting to One Hundred, five & 35/100 Dollars, are fully paid or otherwise discharged by law.

Herein Fail Not, but of this Writ make due return, showing how you have executed the same.

Witness my hand and seal of office, at Austin, Texas, this 25th day of September, 1943.

Ben Lee Chute, Clerk District Court, Travis County, Texas, by Jas. T. Johnson, Deputy. (Seal.)

[fols. 229-236] SHERIFF'S RETURN

Came to hand the 25th day of September, 1943, and executed the 25th day of September, 1943, by taking into my custody the within named R. J. Thomas, and placing him in the Travis County jail, at 4:50 P. M., and executed further the same date by releasing the said Defendant at 8:10 P. M., he having made sufficient bond in the amount of \$1,000.00.

H. W. Collins, Sheriff, Travis County, Texas, by Paul Blair, Deputy.

[File endorsement omitted.]

[fel. 237] IN SUPREME COURT OF TEXAS

Ex Parte R. J. THOMAS

MOTION FOR LEAVE TO FILE AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS—Filed October 16, 1943

To the Honorable Supreme Court of the State of Texas:

Comes now, R. J. Thomas and files this motion most respectfully requesting and asking leave of this Court to file herein his first amended original application for a Writ of Habeas Corpus, the same being attached hereto, and made a part of this motion, a copy of said amended Writ of

Habeas Corpus having been furnished to the Attorney General's Department of the State of Texas and this motion being made prior to the submission.

Ernest Goodman, Mandell & Wright, Attorneys for
R. J. Thomas.

[File endorsement omitted.]

[fol. 238]

IN SUPREME COURT OF TEXAS

[Title omitted]

AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS—Filed
October 16, 1943

Now comes R. J. Thomas and leave of court first had and obtained, files this his first amended original application for a writ of habeas corpus, alleging as follows:

I, R. J. Thomas, am illegally confined and restrained of my liberty in the county jail of Travis County, State of Texas, by H. W. Collins, Sheriff of said county, and that said confinement and restraint is by virtue of a certain judgment or order from the District Court of the 53rd Judicial District holding me guilty of contempt; convicting me to a fine of One Hundred and no/100 (\$100.00) and costs, and three (3) days in jail for violating a certain temporary restraining order issued by the Honorable 53rd District Court of Travis County, Texas, a certified copy of such restraining order, judgment of contempt and commitment are hereto attached, marked Exhibit "A", Exhibit "B" and Exhibit "C", and forming a part of this application as though fully incorporated herein, and I respectfully represent to the Honorable Court that said judgment is wholly void for the following reasons to-wit:

1

That the Honorable Court adjudging me guilty of contempt and convicting me thereof did not have jurisdiction to entertain said cause because the statute, to-wit: House Bill No. 100 is unconstitutional because it invades the constitutional rights of the individual in that it violates Article 1, Section 8 of the United States Constitution; Article 1, Section 10 of the United States Constitution; Article 6 of

the United States Constitution and the provision for free-[fol. 239] dom of speech as provided for in Amendment 1 of the United States Constitution.

2

That said statute and temporary restraining order is void and unenforceable and by reason thereof the Court has no jurisdiction to hold me in contempt for any violation thereof, if the same has been violated, which is not admitted but expressly denied, and is in violation of Section 1 of the Fourteenth Amendment of the United States Constitution, and in violation of Article 1, Section 8, 16, 17, 19, 27 and 29 of the Constitution of the State of Texas, and Article 3, Sections 56 and 57 of the Constitution of the State of Texas.

3

That such statute and temporary restraining order is unreasonable and the enforcement thereof is an unreasonable interference of the right guaranteed to every citizen and resident within the boundaries of our State.

4

That such statute and temporary restraining order is unreasonable and unnecessary to the welfare of the inhabitants of the State of Texas, and further, that said statute is not a valid exercise of the powers of the Legislature in that the Legislature has exceeded its powers in attempting to enact said statute.

5

That said statute, even if constitutional, has not been in any manner violated by me in that it does not prohibit every citizen to solicit membership into a labor union, and in connection therewith the undersigned alleges that he is not within the class of citizens who are required to comply with certain provisions of said Act as more fully shown by the Transcript of the Evidence in this cause, before soliciting any of the citizens of this state to join a labor organization.

[fol. 240]

6

That for the reasons above stated the statute and the temporary restraining order is invalid and void and for

such reasons a judgment of the Court assessing said punishment is without jurisdiction and wholly void.

7

Applicant further prays your Honorable Court that in granting him this application of a habeas corpus hearing that he may be allowed to make bond pending the hearing of this petition in such reasonable amount as may to this Court seem consistent with the fine and the offense.

Wherefore, Premises Considered, your applicant respectfully prays this Honorable Court to grant and issue a Writ of Habeas Corpus, to have him forthwith brought before this Court to the end that he may be discharged from such illegal confinement and restraint, and that he may be allowed a reasonable bond pending said hearing.

R. J. Thomas.

Duly sworn to by R. J. Thomas. Jurat omitted in printing.

[fol. 241] EXHIBIT "A" TO AMENDED APPLICATION

THE STATE OF TEXAS

To R. J. Thomas, Greeting:

Whereas, in a certain cause pending on the docket of the 53rd Jud. District Court of Travis County, Texas, being cause number 69,164, wherein State of Texas is Plaintiff and R. J. Thomas is Defendant. In said suit Plaintiff has filed its Original Petition, asking, among other things, for the granting and issuance of a Writ of Temporary Restraining Order to restrain the defendant, R. J. Thomas, as fully set out and prayed for in Plaintiff's Original Petition, certified copy of which is attached hereto and to which reference is here made for the injunctive relief sought by the Plaintiff; upon presentation and consideration of said petition, the Hon. J. Harris Gardner, Judge of said Court, has entered in said cause the following, to-wit:

[fol. 242] ORDER GRANTING TEMPORARY RESTRAINING ORDER—
September 22, 1943

No. 69,164

THE STATE OF TEXAS

VS.

R. J. THOMAS

FIAT

On this, 22nd day of September, 1943, there was presented to me the plaintiff's sworn petition for temporary restraining order in the above styled and numbered case and it appearing that the defendant Thomas has announced publicly to the press that he will violate the Texas law relating to soliciting membership in a labor union without an organizer's card at a meeting to be held Thursday night, September 23, 1943, at Goose Creek, Harris County, Texas, and it appearing from said petition that said defendant is a "labor organizer" within the meaning of that term as used in House Bill No. 100, Acts of the 48th Legislature, 1943, and that said defendant will violate said law unless restrained from doing so, and it further appearing that there is not sufficient time for a notice to the defendant and a hearing on this application before the date of the defendant's threatened violation of the law and that defendant's attorney, Mr. Earnest Goodman, has stated that he will not attend a hearing if the matter is set down for hearing on September 23, 1943, and the court having found from the sworn petition and statements of counsel that irreparable injury will result to plaintiff unless the relief is granted and that plaintiff is entitled to the relief prayed for;

It is, therefore, Ordered, Adjudged and Decreed that R. J. Thomas be and he is hereby restrained and enjoined from soliciting memberships in Local Union No. 1002 of the O. W. I. U. and members for Local Union No. 1002 of the O. W. I. U. and from soliciting memberships in any other labor union affiliated with the C. I. O. and members of any [fol. 243] other labor union affiliated with the C. I. O. while said defendant is in Texas, without first obtaining an organizer's card as required by law.

It is ordered that this fiat and a copy of plaintiff's petition be served forthwith on said defendant Thomas and

that he be and appear before this Court at 10:00 A. M. on the 25th day of September, 1943, in the court house in Travis County, Texas, and then and there show cause why a temporary injunction shall not issue as prayed for.

This temporary restraining order is is-ued at 4:00 P. M. Wednesday, September 22, 1943, and unless extended it shall expire within ten days from this date.

J. Harris Gardner, Judge, 53rd District Court, Travis County, Texas.

[fol. 244] These are therefore, to Restrain, and you the said R. J. Thomas are hereby restrained as fully set out and prayed for in Plaintiff's Original Petition, certified copy of which is attached hereto, made a part hereof and to which reference is hereby made for a full and complete statement of the injunctive relief sought by the Plaintiff;

And you are further notified that the hearing on Plaintiff's Application for Temporary Injunction is set for hearing at the Courthouse, in the City of Austin, Sept. 25, 1943, at 10:00 A. M., at which time you are required to appear and show cause, if any, why said injunction should not be granted as prayed for;

Herein fail not to obey this Writ, under the Pains and Penalties prescribed by Law!

Given under my hand and seal of office, at Austin, Texas, this the 22 day of Sept. 1943, A. D.

Ben Lee Chote, District Clerk, Travis County, Texas.

(Signed) By Geo. W. Bickler, Deputy. (Seal.)

[fol. 245] (Endorsed) 53 Court, Harris County. File No. 69164. State of Texas vs. R. J. Thomas. Writ of Temporary Restraining Order and Notice to R. J. Thomas. Issued 22 day of Sept. 1943. Ben Lee Chote, Clerk, by Geo. W. Bickler, Deputy. Filed Sept. 24, 1943. Ben Lee Chote, Clerk, by Geo. W. Bickler, Deputy.

Sheriff's return:

Came to hand the 23 day of September, 1943, at 10:10 o'clock A. M., and executed the 23 day of Sept. 1943, at 1:25 o'clock P. M., by delivering to the within named Defendant R. J. Thomas at 802 Rice Hotel at Houston in Harris County, Texas, in person, a true copy of this Writ

of Temporary Restraining Order and Notice, and the accompanying certified copy of Plaintiff's Petition.

(Signed) Neal Polk, Sheriff Harris County. (Signed)
By Frank Paul, Deputy.

Fees	\$1.00
Mileage	.25
Total	\$1.25

[fol. 246] (Endorsed) No. 69164. In the 53rd Judicial District Court of Travis County, Texas. State of Texas vs. R. J. Thomas. Plaintiff's Original Petition and Court's Fiat. Filed in the 53 District Court of Travis County, Texas at 4:20 P. M., Sep. 22, 1943. Ben Lee Chote, District Clerk, by Geo. W. Bickler, Deputy.

THE STATE OF TEXAS,
County of Travis:

I, Ben Lee Chote, Clerk of the District Courts, within and for the State and County aforesaid, do hereby certify that the within and foregoing is a true and correct copy of Temporary Restraining Order and Notice in Cause No. 69,164, wherein The State of Texas is Plaintiff and R. J. Thomas is Defendant as the same appears on file and of record in this office.

Given under my hand and seal of office, at Austin, Texas, this the 15th day of October A. D. 1943.

Ben Lee Chote, Clerk of the District Courts of Travis County, Texas, by Mrs. Helen Sellers, Deputy. (Seal.)

[Endorsed:] File No. 69,164. In the 53rd District Court of Travis County, Texas. The State of Texas vs. R. J. Thomas. Certified Copy of Temporary Restraining Order and Notice.

[fols. 247-249] EXHIBIT "B" TO AMENDED APPLICATION
Omitted. Printed side page 224 ante.

[fols. 250-252] EXHIBIT "C" TO AMENDED APPLICATION
Omitted. Printed side page 228 ante.

[fol. 253] [File endorsement omitted.]

No. 8160

Ex Parte R. J. THOMAS

OPINION—Filed October 27, 1943

This is an original habeas corpus proceeding filed in this Court by relator, R. J. Thomas, to obtain his release from a judgment in contempt imposed by a trial court. The action involves the validity of Section 5 of House Bill No. 100, Acts 1943, 48th Legislature, Chapter 104, page 180 (Vernon's Annotated Texas Statutes, Art. 5154a), which Act prescribes certain regulations applicable to labor unions.

The provisions of the Act pertinent to the action here under consideration are as follows:

"Section 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

"It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

"Sec. 2. * * * (c) 'labor organizer' shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union."

"Sec. 5. All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the

applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation, 'labor organizer'; and, (5) the signature of the Secretary of State dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership."

"Sec. 11. If any labor union violates any provision of this Act, it shall be penalized civilly in a sum not exceeding One Thousand Dollars (\$1,000) for each such violation, the sum recovered as a penalty in a Court of competent jurisdiction, in the name of the State, acting through an enforcement officer herein authorized. Any officer of a labor union and any labor organizer who violates any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a Court of competent jurisdiction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500) or by confinement in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment."

[fol. 255] "Sec. 12. The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts."

"Sec. 14. The provisions of this Act are to be liberally construed so as to effectuate the purposes expressed in the preamble and in such manner as to protect the rights of laboring men to work and/or to organize for their mutual benefit in connection with their work; nor shall anything in this Act be construed to deny the free rights of assembling, bargaining, and petitioning, orally or in writing with respect to all matters affecting labor and employment."

"Sec. 15. If any Section or part whatsoever of this Act shall be held to be invalid, as in contravention of the Constitution, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legis-

lature to enact such Act without respect to such Section or part so held to be invalid."

The State filed suit in the trial court, alleging that the relator was a labor organizer within the meaning of the Act, who for pecuniary or financial consideration was engaged in soliciting members for a certain labor union; that he had not previously applied to nor obtained from the Secretary of State an organizer's card, as provided for in Section 5 of the Act; and that he was threatening to and would violate the provision of said Section 5 of the above Act by soliciting members for said labor union in Texas, unless he was restrained from so doing. The trial court issued a temporary restraining order and caused notice thereof to be served on the relator. Thereafter the relator, who was a paid representative of the union, violated the terms of the injunction by soliciting members for said union without having first registered with the Secretary of State as provided for in said Section 5. After a hearing he was adjudged to be in contempt of court and his punishment fixed at a fine of \$100.00 and confinement in jail for three days.

There is no question as to the sufficiency of the pleadings or the regularity of the proceedings in the contempt action, nor is there any contention that the facts were insufficient to show a violation of Section 5 of the Act. Relator's counsel [fol. 256] set in his argument before this Court conceded the existence of the necessary factual basis for the judgment in the contempt proceedings. His only contention is that said Section 5 of the Act violates the provisions of Article I, Section 8, of the State Constitution, which prohibits the enactment of any law abridging or curtailing the right of freedom of speech, and Article XIV, Section 1, of the Federal Constitution, which prohibits a state from enacting any law abridging the privileges and immunities of a citizen of the United States or depriving any person of his liberty.

The right of the State under its inherent police power to regulate labor unions in order to protect the public welfare appears to be almost beyond question. In recent years, and particularly during the war, the necessity for and the power of labor unions and the effect of their operation upon the general public welfare have been fully demonstrated. As said in the preamble to the Act here under consideration,

labor unions enter into practically every business and industrial enterprise, and greatly affect the economic condition of the country. Under our present social system millions of employees bargain for and secure their rights, such as wages, hours of labor, and other working conditions, through labor organizations. In addition, large sums of money are contributed in the form of dues by the employees for the support of the unions. The manner in which these unions function for the protection of their members greatly affects the economic life of the individual worker. Because of the large membership in a single union, and the limited opportunity of the individual member to personally familiarize himself with the manner in which his union is operated makes it impossible for the individual worker to protect himself in his own right against its mismanagement. These circumstances present a field for legislation by the State for the protection of the rights of the laborer as well as the general public.

[fol. 257] The government under its police power always has the right to enact any and all legislation that may be reasonably necessary for the protection of the health, safety, comfort, and welfare of the public. 9 T. J. 503; *Halsell v. Ferguson*, 109 Tex. 144, 202 S. W. 317, 321; *Bradford v. State*, 78 Tex. Cr. Rep. 285, 180 S. W. 702; *Wylie v. Hays*, 114 Tex. 46, 263 S. W. 563.

Legislation by the National Congress regulating the relationship between labor unions and employers by the National Labor Relations Act of 1935 (U. S. C. A., Sec. 151 et seq.), commonly called the Wagner Act, was sustained under the commerce clause of the Federal Constitution. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 81 L. Ed. 893, 57 S. Ct. 615, 108 A. L. R. 1352. Similar Acts by State Legislatures have been sustained under the police power of the State. *Penske Bros. v. Upholsterers International Union*, 358 Ill. 239, 193 N. E. 112; 97 A. L. R. 1318; *Wisconsin Labor Relation Board v. Fred Rueping Leather Co.*, 228 Wis. 473, 279 N. W. 673; *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relation Board*, 237 Wis. 164, 295 Ill. App. 323, 14 N. E. (2d) 991; *Davega City Radio, Inc. v. State Labor Relations Board*, 281 N. Y. 13, 22 N. E. (2d) 145.

The power to regulate and supervise has been extended to unincorporated associations and societies, such as Ku Klux Klan. *The People of the State of New York v. Charles*

F. Zimmerman, 241 N. Y. 405, 150 N. E. 497, 43 A. L. R. 909, affirmed 278 U. S. 63, 73 L. Ed. 184, 63 S. Ct. 84.

The fact that the Federal Government has legislated on the subject under the commerce clause does not exclude the right of the State to legislate on the same subject under its police power. *Wisconsin Labor Relation Board v. Fred Rueping Leather Co.*, 228 Wis. 473, 279 N. W. 673.

We are therefore convinced that the regulation of labor unions is a proper subject for legislation under the police power by this State. It was for the Legislature, and not the [fol. 258] courts, to say whether such legislation was necessary or was best for the interest of the people of this State.

We are brought then to a consideration of whether Section 5 of the Act here under consideration constitutes an abridgement or curtailment of the right of free speech or the deprivation of a person of his liberty, as guaranteed by the Constitution.

A careful reading of the section of the law here under consideration will disclose that it does not interfere with the right of the individual lay members of unions to solicit others to join their organization. It does not affect them at all. It applies only to those organizers who for a pecuniary or financial consideration solicit such membership. It affects only the right of one to engage in the business as a paid organizer, and not the mere right of an individual to express his views on the merits of the union. Furthermore, it will be noted that the Act does not require a paid organizer to secure a license, but merely requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union. The Act confers no unbridled discretion on the Secretary of State to grant or withhold a registration card at his will, but makes it his mandatory duty to accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith.

That the Legislature was justified in concluding that that part of the Act here under consideration was necessary for the protection of the general welfare of the public, and particularly the laboring class, can hardly be doubted. As previously stated, membership in labor unions runs into millions. Not infrequently thousands of employees work at a single plant. It is impossible for them to know each other, or to know those who purport to represent the

various unions. When a laborer is approached by an alleged organizer it is impossible for him to know whether he is an imposter or whether he has authority to represent the union which he purports to represent. Thus a great field for the perpetration of fraud both as against the laborer and the union is presented. It is important to the laborer that he be able to know that the representations of the purported organizer who approaches him with a request that he join the union and pay his dues in order to be able to work on a particular job are the representations of an accredited agent of the union and that the promises of such representative will be respected and carried out by the union; and it is equally important to the union that the purported representative be identified in order that pretenders under the guise of authority from the union may not misrepresent the organization, nor collect and squander funds intended for its use. The law is for the protection of both the laborer and the union.

Nothing is better established than the power of the Legislature to enact legislation for the purpose of preventing "fraud and deceit, cheating and imposition." 16 C. J. S. 555; *Standard Stock Food Co. v. Wright*, 225 U. S. 540, 56 L. Ed. 1197.

The regulation does not appear to be an unreasonable one. It is true that the Act interferes to a certain extent with the right of the organizer to speak as the paid representative of the union, but such interferences are not necessarily prohibited by the Constitution. The State under its police power may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they are reasonably necessary for the protection of the general public. 12 C. J. 952. See also 9 T. J. 503; *Cox v. New Hampshire*, 312 U. S. 569, 85 L. Ed. 1049.

In the case of *Carpenters Union v. Riter's Cafe*, 315 U. S. 722, 725, 726, it is said:

"Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the State to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain. Whenever state action is challenge as a denial of 'liberty,' the [fol. 260] question always is whether the state has violated 'the essential attributes of that liberty.' Mr. Chief Justice

Hughes in *Near v. Minnesota*, 283 U. S. 697, 708. While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that Clause postulates the authority of the states to translate into law local policies 'to promote the health, safety, morals and general welfare of its people. * * * the limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise.' *Ibid.*, at 707."

Many statutes have been enacted in this State which curtail or limit the right of one to operate or speak as the agent of another. For example: "The Securities Act" (Art. 600a, Vernon's Civil Statutes) prohibits an agent from selling securities for another without a permit from the Secretary of State. Insurance agents are required to secure licenses before being permitted to sell insurance. Art. 5062a, Vernon's Civil Statutes. Railway agents are required to have a certificate of authority before being permitted to sell railway tickets. Art. 6415, Rev. Civ. Stat. 1925. A real estate broker is required to have a license before he may act as the agent for another. Art. 6573a, Vernon's Civil Statutes. Likewise, Congress has enacted a statute which requires agents of foreign governments to register with the Secretary of State before being permitted to so act. 22 U. S. C. A., Sec. 601. Numerous other illustrations could be given. None of these statutes have been held unconstitutional on the ground that they abridged the right of free speech or otherwise unnecessarily deprived a person of his liberty.

In our opinion, the Act imposes no previous general restraint upon the right of free speech. It does not impose a general restraint on the right to solicit others to join the union, nor does it vest unlimited discretionary power in the Secretary of State to grant or refuse a registration card to any one qualified under the Act to solicit members for the union. It merely requires paid organizers to register with the Secretary of State before beginning to operate as such.

In the case of *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352, the Supreme Court condemned the right to impose censorship upon the right of religious worship or free speech by resting in some officer discretionary power to issue or to re-

fuse to issue permits for the sale and distribution of literature, but in that connection said:

[fol. 261] "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise."

The requirement of an organizer's card for paid labor organizers who solicit in Texas is nothing more than a "general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds." See also the case of *Cox v. New Hampshire*, 312 U. S. 569, 85 L. Ed. 1049, wherein the Supreme Court sustained a statute which required the obtaining of a license as a condition precedent to the right to parade in a city.

In the case of *City of Manchester v. Leiby*, 117 Fed. (2d) 661 (certiorari denied), 61 S. Ct. 838, 313 U. S. 562, 85 L. Ed. 1522, the court had under consideration the validity of an ordinance of the City of Manchester which required an applicant to register before being permitted to sell literature on the streets. In discussing the question the court there said:

"The challenged ordinance is modest in scope. It puts no restriction upon the giving away of books, papers, magazines, etc., at any time and at any place. Persons desiring to 'sell or expose for sale' such literature on the streets or other public places are required to identify themselves before a designated official who keeps a record of the name and age of the applicant. For a nominal deposit a badge is issued to the applicant, who must wear the same conspicuously while selling on the streets, so that citizens and police may readily see that the seller has complied with the ordinance. It is provided that this deposit is to be returned upon surrender of the badge. As we read the ordinance the superintendent of schools has no function to pass on the character of the literature which the applicant proposes to expose for sale; nor has he any discretion to grant or withhold the license. On the contrary,

it is his simple duty to issue the badge upon receipt of the application 'properly executed.' Aside from the regulations applicable to children under fourteen, all that the ordinance does is to enable the city to keep track of persons selling literature on the streets."

"By contrast the Manchester ordinance now before us contains no element of prior censorship upon the distribution of literature. It requires only a simple routine act of [fols. 262-263] obtaining a badge of identification before a person can sell on the streets. This reasonable police regulation, in our opinion, imposes no substantial burden upon the freedom of the press or the free exercise of religion."

The case of *Lovell v. City of Griffin*, 303 U. S. 444, 82 L. Ed. 949, relied on by relator, is not in point. The ordinance there under consideration vested in the city manager the discretionary power to grant or refuse a permit to distribute literature of any kind at any time and in any manner, and thereby effectively imposed a censorship on the right to distribute such literature. The same is true of the cases of *Hague v. Committee for Industrial Organization*, 307 U. S. 496, 515, 516, 83 L. Ed. 1423, 1436, 1437, 59 S. Ct. 954; *Schneider v. Irvington*, 308 U. S. 147, 160, 84 L. Ed. 155, 164, 60 S. Ct. 146; *Cantwell v. Connecticut*, 310 U. S. 296, 306, 307, 84 L. Ed. 1213, 1219, 1220, 60 S. Ct. 900, 128 A. L. R. 1352. For an analysis of the opinions in those cases see *Cox v. New Hampshire*, 312 U. S. 569, 85 L. Ed. 1049.

We are of the opinion that the part of the Act in question is valid, and that the trial court acted within its authority in adjudging the relator guilty of contempt. Relator's petition for discharge will be denied, and he will be remanded to the custody of the Sheriff of Travis County, in order that the judgment of the district court may be enforced.

James P. Alexander, Chief Justice.

Opinion delivered October 27, 1943.

[fol. 264]

IN SUPREME COURT OF TEXAS

No. 8160

Ex Parte R. J. THOMAS

Writ of Habeas Corpus

JUDGMENT—October 27, 1943

This day came on to be heard the original habeas corpus proceeding, filed in this Court by the Relator, R. J. Thomas, to obtain his release from a judgment of contempt imposed upon him by the District Court of Travis County, Texas, and the same having been duly considered, because it is the opinion of the Court that the said District Court acted within its authority in adjudging Relator guilty of contempt, and that the said R. J. Thomas is legally restrained of his liberty, and should be remanded to the custody of the Sheriff of Travis County, Texas, it is therefore Ordered, Adjudged and Decreed that, in accordance with the opinion herein delivered, the said Relator be, and he is hereby, remanded to the custody of the Sheriff of Travis County, Texas, in order that the judgment of the District Court may be enforced.

It is further ordered that the Relator, R. J. Thomas, pay all costs incurred herein, for which let execution issue, and that a copy of this judgment, with the opinion herein delivered, be certified to the District Court of the 53d Judicial District of Travis County, Texas, for observance.

[fol. 265] [File endorsement omitted.]

[fol. 266]

IN SUPREME COURT OF TEXAS

No. 8160

Ex Parte R. J. THOMAS

RELATOR'S MOTION FOR REHEARING—Filed November 9, 1943

Now Comes R. J. Thomas, Relator in the above numbered and entitled cause, and respectfully moves the Court to set aside the judgment of this Court entered on the 27th day of

October, 1943 affirming the action of the trial court in adjudging the relator guilty of contempt, and to grant him a rehearing, and to reverse said cause, discharging relator and therefor says:

1

The Supreme Court erred in holding that

"because of the large membership in a single union, and the limited opportunity of the individual member [fol. 267] to personally familiarize himself with the manner in which the union is operated makes it impossible for the individual worker to protect himself in his own right against its mismanagement,"

because no such situation exists which would warrant the Court in taking judicial notice of the existence of any such purported fact. On the contrary the record shows, without contradiction, that unions are operated upon a democratic basis with full and complete control lodged in the membership thereof.

2

The Supreme Court erred in holding as follows:

"it is impossible for them (the thousands of employees working in a single plant) to know each other, or to know those who purport to represent the various unions. When a laborer is approached by an alleged organizer it is impossible for him to know whether he is an imposter or whether he has authority to represent the union which he purports to represent";

because such a finding and holding is not supported by the record and because no such fact situation exists which would justify the court in taking judicial notice of any such purported facts.

[fol. 268]

3

The Supreme Court erred in holding as follows:

"It is important to the laborer that he be able to know that the representations of the purported organizer who approaches him with a request that he join the union *and* pay his dues in order to be able to work on a particular job are the representations of an accredited agent of the union and that the promises of such repre-

representatives will be respected and carried out by the union; and it is equally important to the union that the purported representative be identified in order that pretenders under the guise of authority from the union may not misrepresent the organization, nor collect and squander funds intended for its use",

because (1) There is no evidence in the record to support any finding that any labor organizer soliciting memberships in a union, whether for pay or not, either collects or has authority to collect any dues or other money in connection with or at the time of such solicitation; (2) No such situation exists as would warrant this Honorable Court in taking judicial notice of the existence of any such purported connection between the solicitation of membership in a union by a paid organizer and the alleged payment of any dues or other money to such paid organizer at the time of or because of the solicitation of membership; (3) There are [fol. 269] no facts in the record which would support a finding that the person solicited for membership is either asked to pay or required to pay any dues into any union in order to be able to work on a particular job; (4) No such situations exist as would authorize the court to take judicial notice of the existence of any such purported facts or purported connection between the soliciting of membership and the payment of union dues, whether or not in order to be able to work on a particular job; (5) The possession of an organizer's identification card issued by the Secretary of State offers no assurance that the person in possession thereof is, at the time of the solicitation, an accredited agent of any legitimate union, or that any promises made by a person in possession of such card are made on behalf of any legitimate labor union, or that any promises made by him can or will be carried out by any legitimate labor union, and such finding has no support in the record; (6) No such situations exist which would warrant this court in taking judicial notice of the existence of such purported facts; (7) The possession by any person of an organizer's card issued by the Secretary of State is no assurance against pretenders purporting to act under authority from any legitimate union, nor assurance against the collection [fol. 270] or squandering of funds of any legitimate union, and such finding has no support in the record; (8) No situation exists which would warrant this court in taking judicial

notice of the existence of any such purported fact; (9) The statute does not even purport to protect workers against alleged abuses or misrepresentations by persons who solicit members for unions, but who receive no "pecuniary or financial consideration" therefor from the union; (10) The Relator herein, in soliciting a person, or persons, to join the Oil Workers International Union did not ask for or receive any dues, fees, or consideration of any kind from the person, or persons, so solicited, nor from anyone else in connection with such solicitation.

4

The Supreme Court erred in holding that the law affects only one engaged in the "business as a paid organizer" for the reason that the record does not support a finding that the organization of a labor union is a business; and because no situation exists which would warrant this court in taking [fol. 271] judicial notice of the existence of any such purported fact; and because the record affirmatively shows that a labor union does not operate as a commercial enterprise or for a profit, and is not a business; and because the record does not show that a paid organizer is engaged in any business, and no fact situation exists that would warrant this court in taking judicial notice of the existence of any such purported facts; and because the record affirmatively shows that "labor organizers", as defined in the statute, are paid to perform numerous activities on behalf of the membership of a labor union, and that all union members, agents, representatives, officers and organizers, paid or unpaid, are expected to solicit members for their union, and that similarly, Relator was paid a salary by the U. A. W.-C. I. O. to perform his many duties as President of his union and only incidentally to solicit members.

5

The Supreme Court erred in holding that the right to ask a person to join a union can be curtailed or limited by statute in the same manner as the solicitation by insurance, securities or real estate agents. The right of the former is the right of free speech protected under the Fourteenth [fol. 272] Amendment of the Constitution of the United States, and is susceptible of restriction only to prevent

grave and immediate danger to interests which the state may lawfully protect. Solicitation by the latter, however, is not free speech as protected by the First Amendment of the Constitution of the United States, and may be subjected to all restrictions which the legislature has a "rational basis" for adopting.

6

The Supreme Court erred in holding that:

"the Act does not require a paid organizer to secure a license, but merely requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union"

for the reason that such holding is not supported by the record, but, on the contrary, the record affirmatively discloses that the Act imposes a license upon one who solicits members for his union on a part or full time basis.

[fol. 273]

7

The Supreme Court erred in holding that:

"the act confers no unbridled discretion on the secretary of state to grant or withhold a registration card at his will, but makes it his mandatory duty to accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith,"

because the Act shows upon its face and the record shows that (a) the Secretary of State must be satisfied the applicant is not an alien, (b) that the applicant has not been convicted of a felony, (c) that if convicted of a felony his full rights of citizenship have been restored, (d) that his credentials are in such order as may be required by the Secretary of State, (e) that no mistake, fraud or misrepresentation is involved, (f) and that the application is properly notarized; (g) and further the Act does not require that the Organizer's card be issued at any particular time after receipt of such application; that all of these matters are matters of discretion with the Secretary of State.

The Supreme Court erred in holding that:

[fol. 274] "the Legislature was justified in concluding that that part of the Act here under consideration was necessary for the protection of the general welfare of the public, and particularly the laboring class, can hardly be doubted",

because such finding is not supported by the record and no situation exists which would warrant the court in taking judicial notice of the existence of any such fact; and because the Act shows upon its face and the record reflects that it not only affords no protection to the general welfare of the public and particularly the laboring class, but on the contrary does and will promote and encourage fraud and deceit upon the public and the laboring class by persons wholly unauthorized to act for and on behalf of any established labor union, but who are in possession of credentials issued by the Secretary of the State of Texas purporting to give authority to the individual to act for and on behalf of an alleged labor union.

The Supreme Court erred in basing its finding that the statute is constitutional upon decisions upholding legislation "regulating the relationship between labor unions and employers" since this statute seeks to regulate the internal affairs of a labor union as distinguished from regulating the relationship between labor unions and employers.

[fol. 275]

The Supreme Court erred in holding that

"The regulation does not appear to be an unreasonable one although the act interferes to a certain extent with the right of the organizer to speak as the paid representative of the union (but) such interferences are not necessarily prohibited by the Constitution",

for the reason that the interferences by this Act are neither "indirect" or "limited" and are neither "reasonably necessary for the protection of the general public" nor do they in fact offer any protection to the general public

or any sections of the general public as is disclosed on the face of the Act and in the record.

11

The Supreme Court erred in holding that the Act

“merely requires paid organizers to register with the Secretary of State before beginning to operate as such”

for the reason that the Act on its face affirmatively requires and the record affirmatively shows that the Secretary of State must ascertain whether or not the applicant is an alien, whether he has been convicted of a felony, and whether or not the applicant, if previously convicted of a [fol. 276] felony, has had his citizenship rights fully restored.

12

The Supreme Court erred in holding that the Act, and particularly sections 2(c), 4(a), 5 and 12, as applied to Relator R. J. Thomas does not violate Articles 1 and 14 of the Constitution of the United States, as well as Article 1, Section 8 of the Constitution of the State of Texas for the reason that the record shows upon its face that the conduct upon which he was held in contempt of court amounted to no more than a mere oral request that his audience in general and one Pat O'Sullivan in particular join the Oil Workers International Union; the record shows that he collected no money in connection with such request, that he asked for no money in connection with such request, and that no money was tendered to him in connection with such request, either in the form of dues or initiation fees, or fines, or assessments, or any other sum of money in any way connected with membership in the Oil Workers International Union or any other Union.

[fol. 277]

13

The Supreme Court erred in holding that, because the Statute does not interfere with the right of “individual lay members” of unions to solicit membership, the licensing provision is thereby made constitutional. Because a person receives “pecuniary or financial consideration” for performing union activities, one of which is the solicitation of members, does not transform such solicitation into a

commercial enterprise so as to deprive him of his right of free speech protected under the Fourteenth Amendment of the Constitution of the United States.

14

The Supreme Court erred in holding that the Statute "imposes no previous general restraint upon the right of free speech". The requirement which makes it illegal to ask a person to join a union without first obtaining a license from the Secretary of State is such a restraint upon free speech.

15

The Supreme Court erred in failing to find that the Act, and particularly sections 2(c), 4(a), 5 and 12, constitutes [fol. 278] class legislation by its arbitrary and unreasonable discrimination against labor unions, that it denies to Relator the equal protection of the law, and that the Act is therefore unconstitutional under the Fourteenth Amendment of the Constitution of the United States.

16

The Supreme Court erred in failing to find that the Act, and particularly section 4(a) constitutes an abridgment of the right of free speech under the Fourteenth Amendment of the Constitution of the United States. Under this section of the Act the State Legislature has prohibited aliens and persons convicted of a felony whose rights have not been fully restored, from asking a person to join a union, and these two excluded classes are not even permitted to apply for a license, much less obtain one.

17

The Supreme Court erred in failing to find that the Act, and particularly section 4(a) denies to aliens and persons convicted of a felony whose rights have not been fully restored the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 279]

18

The Supreme Court erred in that the Act, and particularly sections 2(c), 4(a), 5 and 12, imposes an undue burden upon

interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

19

The Supreme Court erred in failing to find that the Act, and particularly section- 2(c), 4(a), 5 and 12 is in conflict with the National Labor Relations Act and is, therefore, unconstitutional under the provisions of Article 1 of the Constitution of the United States.

20

The Supreme Court erred in holding that the Act, and particularly sections 2(c), 4(a), 5 and 12, does not violate Article 1 and Article 14 of the United States Constitution as well as Article I, Section 8 of the Constitution of the State of Texas.

Relator respectfully prays that this Motion be granted, and that the judgment of the trial court be in all things reversed, and that the Relator be in all things discharged.

[fol. 280] A copy of this Motion has been served upon the Attorney General of the State of Texas by Registered Letter addressed to Mr. Fagin Dickson, Assistant Attorney General of record in this case, Capitol Building, Austin, Texas, deposited in the United States mails on the 8th day of November, 1943.

Respectfully submitted, Mandell & Wright, Maurice Sugar & Ernest Goodman, Lee Pressman, Attorneys for Petitioner.

Of Counsel: Arthur J. Mandell, Herman Wright, 501 State National Bank Bldg., Houston, Texas; Maurice Sugar, Ernest Goodman, 3220 Barlum Tower, Detroit, 26, Michigan; Lee Pressman, 718 Jackson Place, N. W., Washington, D. C.

[fol. 281] IN SUPREME COURT OF TEXAS

[Title omitted]

ORDER OVERRULING MOTION FOR REHEARING—November 24, 1943

The motion for rehearing filed herein by the Relator, R. J. Thomas, having heretofore been submitted to the

Court, and after due consideration of same, it is ordered that the said motion be, and is hereby, overruled; that Relator, R. J. Thomas, pay all costs incurred herein, for which execution may issue.

[fol. 282]

IN SUPREME COURT OF TEXAS

[Title omitted]

PETITION FOR APPEAL—Filed November 27, 1943

To the Hon. James P. Alexander, Chief Justice of the Supreme Court of the State of Texas:

Now comes R. J. Thomas, the above-named Relator and Appellant by his attorneys, Mandell & Wright, Ernest Goodman and Lee Pressman, and respectfully shows that:

1) On October 27, 1943 in the above-entitled cause, the Supreme Court for the State of Texas, the highest court of said state in which a decision in said cause could be made, rendered a certain judgment against said Appellant, refusing to discharge Appellant upon his petition for writ of habeas corpus and remanding Appellant to the custody of the Sheriff of Travis County, Texas, pursuant to a judgment in contempt against Appellant by the District Judge of Travis County, Texas, holding Appellant guilty of contempt of court and sentencing him to three days imprisonment and one hundred (\$100.00) dollars fine.

2) Said contempt of court consisted of the violation of a temporary restraining order issued by said judge restraining Appellant from soliciting members in any "labor union affiliated with the C. I. O.—without first obtaining an organizer's card" from the Secretary of State of the State of Texas, as required by House Bill #100, Acts 1943, 48th Legislature of the State of Texas, Chapter 104 (Vernon's Annotated Texas Statutes, Article 5154A), in that Appellant in speaking before a meeting of workers, requested the audience in general and one Pat O'Sullivan in particular to join the Oil Workers International Union.

3) On the 9 day of November, 1943 Appellant filed with the Supreme Court of the State of Texas his petition for re-hearing, which petition was denied by said court on the

24th day of November, 1943. Said judgment of said court of October 27, 1943, became operative and final on the 24th day of November, 1943.

4) Said Supreme Court adjudged by its said final judgment in the above-entitled matter that said statute, and particularly Sections 2(c), 4(a), 5 and 12 thereof, and the temporary restraining order for violation of which Appellant was found guilty of contempt, are not in violation of the provisions of the 14th amendment to the United States Constitution, and that said Statute and temporary restraining order did not abridge or curtail the right of free speech of Appellant or abridge his privileges and immunities as a citizen of the United States or deprive him of his liberty without due process of law, by requiring Appellant to obtain a license (organizer's card) from the Secretary of State of the State of Texas before asking a worker to join a union affiliated with the C. I. O.

5) Said Supreme Court also adjudged by said final judgment in the above-entitled matter that the provisions of said Statute and particularly Sections 2(c), 4(a), 5 and 12 thereof, are not in violation of the provisions of the 14th amendment to the United States Constitution prohibiting a state from enacting any law denying the equal protection of the laws to persons within its jurisdiction, in prohibiting an alien, or a person who has been convicted of a felony but whose rights have not been fully restored, from asking a worker to join a union.

[fol. 284] 6) Said Supreme Court also adjudged by its final decision in the above-entitled matter that the said Statute, and particularly Sections 2(c), 4(a), 5 and 12 thereof, requiring persons in the state of Texas and particularly Appellant to obtain a license (organizer's card) before soliciting workers to join a union, does not impose an undue burden upon interstate commerce in violation of Article I, Section 8 of the United States Constitution and does not conflict with the National Labor Relations Act in violation of Article VI of the United States Constitution.

Relator and Appellant has filed with this petition with the clerk of said Supreme Court of the State of Texas an assignment of errors setting out separately and particularly each error asserted by him, and also presents herewith a separate typewritten statement particularly disclosing

the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Wherefore your petitioner prays the allowance of an appeal from said judgment of the Supreme Court of the State of Texas to the Supreme Court of the United States to the end that the record in said matter may be removed into the said Supreme Court and the errors complained of by your petitioner may be examined and corrected and said judgment reversed and your petitioner discharged; and your petitioner will ever pray.

R. J. Thomas, Petitioner; Mandell & Wright, by
Arthur J. Mandell, Herman Wright, Ernest Goodman, His Attorneys.

[File endorsement omitted.]

[fol. 285]

IN SUPREME COURT OF TEXAS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 27, 1943

Now comes the above Relator and Appellant by his attorneys and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Texas in the above-entitled matter there is manifest error, and therefore assigns the following errors in said cause:

1) The Supreme Court of the State of Texas erred in holding and deciding that Appellant was guilty of contempt of court, and properly sentenced to 3 days imprisonment and \$100.00 fine, by making a speech in which he orally requested that an audience in general and one Pat O'Sullivan in particular join the Oil Workers International Union, solely because he did not first obtain from the Secretary of State of the State of Texas a license (organizer's card) as required by House Bill \approx 100 Acts 1943, 48th Legislature of the State of Texas, Chapter 104 (Vernon's Annotated Texas Statutes, Article 5154A), and particularly Section 5 thereof, and in deciding that said judgment of contempt did not deprive Appellant of his liberty without due process of law and did not deny to him the equal protection of the

laws within the meaning of the 14th Amendment of the Constitution of the United States.

2) The Supreme Court of the State of Texas erred in holding and deciding that House Bill #100, Acts 1943, 48th Legislature of the State of Texas, Chapter 104 (Vernon's Annotated Texas Statutes, Article 5154A), and particularly Sections 2(c), 4(a), 5 and 12 thereof, as applied to Appellant R. J. Thomas, are not in conflict with and a violation of the provisions of the 14th Amendment to the Constitution of the United States in that said Statute assumes and seeks:

(a) to deprive Appellant and certain other citizens of the United States and of the State of Texas, of rights, privileges and immunities secured to other citizens of the United States and of said State;

(b) to deprive Appellant and other citizens and persons resident in the United States and in the State of Texas of liberty and property without due process of law;

(c) to deprive and to deny to Appellant and certain citizens and persons within the jurisdiction of the State of Texas, the equal protection of the law.

3) The Supreme Court of the State of Texas erred in holding that, because said Statute does not interfere with the right of "individual lay members" of unions to solicit members, the licensing provision thereof is not in conflict with and in violation of the provisions of the 14th Amendment to the Constitution of the United States.

4) The Supreme Court of the State of Texas erred in holding and deciding that said Statute "imposes no previous general restraint upon the right of free speech" in violation of the provisions of the 14th Amendment to the Constitution of the United States.

5) The Supreme Court of the State of Texas erred in failing to hold that said Statute, and particularly Sections 2(c), 4(a), 5 and 12 thereof, constitutes class legislation by its arbitrary and unreasonable discrimination against labor unions, by its denial to Appellant of the equal protection of the laws, and is therefore invalid and unconstitutional under the provisions of the 14th Amendment to the Constitution of the United States.

[fol. 287] * 6) The Supreme Court of the State of Texas erred in failing to hold that said Statute, and particularly section 4(a) thereof, by prohibiting aliens, and persons convicted of a felony whose rights have not been fully restored, from asking a person to join a union, constitutes an abridgment of the right of free speech protected under the 14th Amendment to the Constitution of the United States.

7) The Supreme Court of the State of Texas erred in failing to hold that said Statute, and particularly section 4(a) thereof, denied to aliens, and persons convicted of a felony whose rights have not been fully restored, the equal protection of the law guaranteed by the 14th amendment to the Constitution of the United States.

8) The Supreme Court of the State of Texas erred in failing to hold that said Statute, and particularly sections 2(c), 4(a), 5 and 12 thereof, imposes an undue burden upon interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

9) The Supreme Court of the State of Texas erred in failing to hold that said statute and particularly sections 2(c), 4(a), 5 and 12 is in conflict with the National Labor Relations Act and is therefore unconstitutional under the provisions of Article 6 of the Constitution of the United States.

10) The Supreme Court of the State of Texas erred in entering judgment denying Appellant's petition for writ of habeas corpus.

11) The Supreme Court of the State of Texas erred in ordering judgment to be entered and in entering judgment remanding Appellant to the custody of the Sheriff of Travis County, Texas.

For which errors said R. J. Thomas Relator and Appellant herein, prays that said decision and judgment of the [fol. 288] Supreme Court of the State of Texas, dated October 27, 1943 in the above-entitled cause be reversed and that a judgment be rendered in favor of Relator and Appellant, discharging him.

Mandell & Wright, by Herman Wright, Arthur J.
Mandell, Ernest Goodman.

[File endorsement omitted.]

[fol. 289]

IN SUPREME COURT OF TEXAS

[Title omitted]

ORDER ALLOWING APPEAL—Filed November 27, 1943

The appellant in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of Texas on the 27th day of October, 1943, and from each and every part thereof, and having presented and filed its Petition for Appeal, Assignment of Errors, Prayer for Reversal and Statement as to Jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Texas in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Texas shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Clerk of the Supreme Court of the United States so that he shall have the same in said Court within sixty (60) days of this date.

And it is further ordered that the supersedeas bonds now on file with the Supreme Court of the State of Texas in the above entitled suit remain in full force and effect throughout the pendency of the said appeal proceedings; that [fols. 290-291] security for costs on appeal be fixed at the sum of \$500.00, and that upon approval of bond in said amount this order shall operate as a supersedeas.

Dated at Austin, Texas, this 27th day of November, 1943.

James P. Alexander, Chief Justice of the Supreme Court of the State of Texas.

[File endorsement omitted.]

[fols. 292-356] Bond on Appeal for \$500.00 approved and filed November 27, 1943 omitted in printing.

[fol. 357] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 358] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION
OF JURISDICTION—March 27, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits.

[fol. 359] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF
THE PARTS OF THE RECORD TO BE PRINTED—Filed March 31,
1944

Now comes R. J. Thomas, the Appellant in the above-entitled cause, and states that the points upon which he intends to rely in this Court in this case are as follows:

1. House Bill No. 100 of the State of Texas (particularly Sections 2(c), 4(a), 5 and 12), on its face and as construed and applied through the issuance of the temporary restraining order upon which the contempt judgment is based, imposes a previous general restraint upon the exercise of Appellant's right of free speech by prohibiting Appellant from soliciting workers to join a union without first obtaining a license (organizer's card) thereby depriving Appellant of his right of free speech in violation of the First Amendment and the due process clause of the Fourteenth Amendment to the United States Constitution.
2. House Bill No. 100 of the State of Texas (particularly Sections 2(c), 4(a) and 12) on its face and as construed and applied denies to aliens the right to solicit workers to join a union, and thereby deprives such persons of the right of free speech in violation of the First Amendment and the due process clause of the Fourteenth Amendment to the United States Constitution.
3. House Bill No. 100 of the State of Texas (particularly Sections 2(c), 4(a), 5 and 12) on its face and as construed

and applied to the Appellant constitutes class legislation, is discriminatory and deprives Appellant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution by arbitrarily and unreasonably discriminating against labor organizations and those who solicit members therefor, and against non-citizens.

4. House Bill No. 100 of the State of Texas (particularly Sections 2(c), 4(a), 5 and 12) on its face and as construed and applied to the Appellant in requiring Appellant to obtain a license (organizer's card) before soliciting workers to join a union imposes an undue burden upon interstate commerce in violation of Article I, Section 8 of the United States Constitution and is void as being in conflict with a federal statute (the National Labor Relations Act) in violation of Article VI of the United States Constitution.

Appellant further states that the following are the portions of the record which he considers unnecessary for the consideration of the points set forth above:

1. The following portions of the "Statement of Facts":
 - a. Reporter's certificate appearing at page 193 of the record.
 - b. Stipulation of counsel appearing at pages 194 and 195 of the record.
2. The following portions of the "Transcript from District Court":
 - a. Bill of costs appearing at page 230 of the record.
 - b. Clerk's certificate appearing at pages 231 and 232 of the record.
3. Application for writ of habeas corpus appearing at pages 233 to 236 of the record.
4. Citation to Appellee appearing at page 291 of the record.
5. Praecipe appearing at pages 296 through 299 of the record.
6. Counter-Praecipe appearing at page 315 of the record.
7. Motion of State to dismiss application for writ of habeas corpus, including attached documents, appearing at pages 316 to 347 of the record.

8. Order overruling motion to dismiss appearing at page 348 of the record.
9. Answer to motion to dismiss appearing at pages 349 [fol. 361] through 351 of the record.
10. Bill of costs appearing at page 356 of the record.

Lee Pressman, Attorneys for the Appellant.

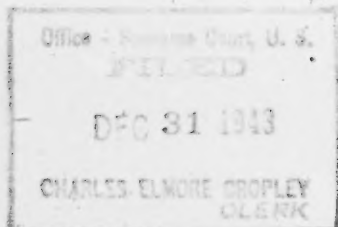
Dated: March 31, 1944.

Endorsed on Cover: File No. 48,062, Texas, Supreme Court, Term No. 569. R. J. Thomas, Appellant, vs. H. W. Collins, Sheriff of Travis County, Texas. Filed December 31, 1943. Term No. 569 O. T. 1943.

(1301)



FILE COPY



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. [REDACTED] 14

R. J. THOMAS,

Appellant,

vs.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS.

STATEMENT AS TO JURISDICTION.

**LEE PRESSMAN,
ARTHUR J. MANDELL,
HERMAN WRIGHT,
ERNEST GOODMAN,**
Counsel for Appellant.

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IN THE SUPREME COURT FOR THE STATE OF TEXAS

No. 8160

EX PARTE R. J. THOMAS.

STATEMENT IN SUPPORT OF JURISDICTION.

The Relator and Appellant, R. J. Thomas, in support of the jurisdiction of the Supreme Court of the United States to review the above-entitled cause on appeal, respectfully shows:

A.

Statutory Provisions Sustaining Jurisdiction.

The statutory provision which sustains the jurisdiction of the Supreme Court of the United States is Section 344(a) of Title 28 of the United States Code, reading, to the extent relevant here, as follows:

*"Sec. 344(a). Final judgment or decree in any suit in the highest court of a State in which a decision could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."*

The remedy by writ of error under the foregoing section has been abolished and an appeal substituted in its place by Section 861(a) of Title 28 of the United States Code.

B.

Statute of the State the Validity of Which Is Involved.

The statute of the State of Texas, the validity of which has been sustained by final judgment of the Supreme Court of the State of Texas, the highest court of said State, as not being violative of or repugnant to the laws of the United States is House Bill #100, Acts 1943, 48th Legislature of the State of Texas, Chapter 104 (Vernon's Annotated Texas Statutes, Article 5154A). The pertinent provisions of said statute here involved are:

“Section 5. Organizers. All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3), a space for his personal signature; (4) a designation, “labor organizer”; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership.

“Section 2(c)” defines the term ‘labor organizer’ as follows: ‘labor organizer shall mean any person who for

a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union;'

"*Section 4(a)*. It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored.

"*Section 12. Enforcement by Civil Procedure.* The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunction, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts."

The foregoing sections are believed to conflict with Section One of the Fourteenth Amendment, Article 1, Section 8 and, insofar, as it conflicts with the National Labor Relations Act, Title 29 Chapter 7 of the United States Code, with Article VI of the Constitution of the United States.

C.

Date of Judgment and Date of Application for Appeal.

The date of final judgment of the Supreme Court of the State of Texas, which is now sought to be reviewed was October 27, 1943. Appellant's motion for a rehearing was denied on November 24, 1943. The time for taking an appeal began to run on the date of the denial of said motion for a re-hearing, to-wit: Nov. 24, 1943. *Aspen Mining and Smelting Company v. Billings*, 150 U. S. 31.

The date on which the petition for appeal was presented and the appeal allowed was November 27, 1943.

Under the provisions of Section 350 of Title 28 of the United States Code, Appellant may bring his appeal within 3 months after the denial of said motion for re-hearing by the Supreme Court of the State of Texas.

D.

Nature of Case and Rulings Below.

Appellant, R. J. Thomas, is president of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO and one of the vice-presidents of the Congress of Industrial Organizations. He is a resident of the City of Detroit, State of Michigan.

Appellant arrived in Houston, Texas on September 22, 1943 to address a meeting on the following evening. The meeting was called under the auspices of the Oil Workers International Union, affiliated with the Congress of Industrial Organizations incident to its campaign to organize the employees at the Humble Oil Company, a petition for election having been heard by the National Labor Relations Board.

Shortly before the Meeting Appellant was served with a temporary restraining order issued by the 53rd Texas District Court upon a complaint filed by the State of Texas, enjoining Appellant "from soliciting membership in . . . and members for Local Union 1002 . . . and from soliciting memberships in any other labor union affiliated with the CIO . . . while said defendant is in Texas without first obtaining an organizer's card as required by law."

Appellant delivered his speech to the meeting attended largely by workers of the Humble Oil Company and solicited the audience in general and one Pat O'Sullivan in particular to join the Oil Workers International Union. Appellant had

not applied for or obtained a license (organizer's card) from the Secretary of State of the State of Texas as required by said Statute, House Bill #100.

An order for attachment was issued for the arrest of Appellant upon a motion by the State of Texas for contempt for violating the temporary restraining order.

At the contempt hearing on September 25, 1943 Appellant pleaded not guilty to the charge of contempt and by written pleading and orally urged that the temporary restraining order and House Bill #100, insofar as they prevented him from soliciting members into a union without first obtaining a license, were unconstitutional under the 14th Amendment to the Constitution of the United States and under certain other sections of the United States Constitution and of the Constitution of the State of Texas.

After hearing the testimony and overruling Appellant's motions to dismiss and quash, the District Judge found Appellant guilty of contempt of court for "violation of the law and of the order of this court" and sentenced him to "imprisonment for a period of three days and a fine of \$100.00."

Thereupon Appellant was remanded to the custody of the Sheriff of Travis County, Texas, but was released within a few hours upon filing a bond set by the Chief Justice of the Supreme Court of the State of Texas upon a petition for writ of habeas corpus filed in that court.

In his petition for writ of habeas corpus and in the brief filed and arguments made in his behalf before the Supreme Court of the State of Texas, Appellant seasonably claimed that said Statute insofar as it prevented Appellant from soliciting members into a union without first obtaining a license, and the temporary restraining order issued thereunder, were unconstitutional on the grounds that they deprived Appellant of his right of free speech, that said Statute constituted class legislation, that it was discrimina-

tory and deprived Appellant of the equal protection of the laws as guaranteed by the 14th Amendment to the Constitution of the United States. Appellant also seasonably claimed that said temporary restraining order and Statute imposed an undue burden upon interstate commerce in violation of Article 1, Section 8 of the United States Constitution, and that they conflicted with the National Labor Relations Act in violation of Article VI of the United States Constitution.

On October 27, 1943 the Supreme Court of the State of Texas rendered its opinion and judgment denying Appellant's petition for writ of habeas corpus and remanding Appellant to the custody of the Sheriff of Travis County.

The Texas Supreme Court held that the Statute did not abridge Appellant's right of free speech or deprive him of his liberty under the 14th Amendment to the Constitution of the United States because said Statute only required labor organizers who solicited members "for a pecuniary or financial consideration" to obtain a license. The Court stated in its opinion:

"A careful reading of the section of the law here under consideration will disclose that it does not interfere with the right of the individual lay members of unions to solicit others to join their organization. It does not affect them at all. It applies only to those organizers who for a pecuniary or financial consideration solicit such membership. It affects only the right of one to engage in the business as a paid organizer and not the mere right of an individual to express his views on the merits of the union."

The Court further held that the Statute did not require Appellant to obtain a license as a prerequisite to the exercise of his right to solicit a member in a union. The Court stated in its opinion:

"Furthermore, it will be noted that the Act does not require a paid organizer to secure a license, but merely

requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union. The Act confers no unbridled discretion on the Secretary of State to grant or withhold a registration card at his will, but makes it his mandatory duty to accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith."

The Court further held that the Statute did not impose a previous general restraint upon the right of free speech. The Court stated in its opinion:

"In our opinion, the Act imposes no previous general restraint upon the right of free speech. It does not impose a general restraint on the right to solicit others to join the union, nor does it vest unlimited discretionary power in the Secretary of State to grant or refuse a registration card to any one qualified under the Act to solicit members for the unions. It merely requires paid organizers to register with the Secretary of State before beginning to operate as such."

The Court further held that the statute did not contravene the provisions of the 14th Amendment to the Constitution of the United States in that it was within the police power of the state to enact legislation reasonably necessary for the protection of the general public. The Court stated in its opinion:

"The regulation does not appear to be an unreasonable one. It is true that the Act interferes to a certain extent with the right of the organizer to speak as the paid representative of the union, but such interferences are not necessarily prohibited by the Constitution. The State under its police power may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they

are reasonably necessary for the protection of the general public."

The Court further held that the statute did not contravene the provisions of the 14th Amendment to the Constitution of the United States in that the State Legislature had the right to limit the right of a person to speak or act as agent of a labor union. The Court stated in its opinion:

" 'The Securities Act' (Art. 600a, Vernon's Civil Statutes) prohibits an agent from selling securities for another without a permit from the Secretary of State. Insurance agents are required to secure licenses before being permitted to sell insurance. Art. 5062a, Vernon's Civil Statutes. Railway agents are required to have a certificate of authority before being permitted to sell railway tickets. Art. 6415, Rev. Civ. Stat. 1925. A real estate broker is required to have a license before he may act as the agent for another. Art. 6573a, Vernon's Civil Statutes. Likewise, Congress has enacted a statute which requires agents of foreign governments to register with the Secretary of State before being permitted to so act. 22 U.S.C.A., Sec. 601. Numerous other illustrations could be given. None of these statutes have been held unconstitutional on the ground that they abridged the right of free speech or otherwise unnecessarily deprived a person of his liberty."

E.

Substantiality of Questions Involved.

The Appellant respectfully represents that the questions involved in its appeal to the Supreme Court of the United States are of a substantial nature. It is well established that an appeal will not be dismissed for want of a substantial Federal question, unless the contentions of the Appellant are "clearly not debatable and utterly lacking in merit." *Hamilton v. Regents of University of California*, 293 U. S. 245, 258.

The issue raised by Appellant's contention that the Statute and the temporary restraining order are unconstitutional as depriving Appellant of his right of free speech under the 14th Amendment to the Constitution of the United States is one which affects more than 12 million workers who are now organized into labor unions in this country. The effect of this Statute is to restrict and limit the labor unions of this country in their effort to organize workers, particularly in states where only recently organizing efforts have begun. The Statute as applied in this case makes the mere request by one of another to join a union, illegal. No dues, fees or any other consideration were involved in the solicitation by the Appellant in this case. If the right to ask a worker to join a union may be made illegal except on compliance with conditions imposed by the State, then all speech may be so conditioned. No claim has been made and no claim can be made that the act of asking a worker to join a union is in itself an illegal, improper or reprehensible one. The right to solicit workers to join unions has been protected by Congressional enactment in the National Labor Relations Act. It is no answer to say, as the Supreme Court of Texas has here said, that since the previous restraint is not a burdensome one, the State has a right to impose it. It is not the extent of the restraint but the power to impose one which is the true test of freedom of speech. *Grasjean v. American Press Company*, 297 U. S. 233.

However, the Statute actually places a substantial and burdensome previous general restraint upon persons seeking to obtain a license. The nature of the forms to be filled out and the time necessary to obtain these forms, to fill them out, submit them and receive the license, in themselves constitute a real restraint upon free speech. In addition, the Secretary of State may exercise, and has

exercised administrative discretion in issuing the license (organizer's card).

Merely because the Statute applies only to the solicitation by those who receive a pecuniary or financial consideration does not remove the constitutional protection of free speech from these persons. Freedom of speech is available to all, not merely those who can pay their own way. *Murdock v. Pennsylvania*, 63 Supreme Court Reports 870.

With respect to aliens and persons convicted of a felony whose rights have not been fully restored, the Statute absolutely prohibits the solicitation of a person to join a union. They are not even permitted to apply for a license. With respect to these two groups, the Statute therefore is clearly a denial of free speech under the 14th Amendment to the Constitution of the United States.

The United States Supreme Court has held unconstitutional statutes and ordinances which placed a previous general restraint on the right of free speech, press or assembly. This case comes within the principles established in these decisions:

Thornhill v. Alabama, 310 U. S. 88;

Lovell v. City of Griffin, 303 U. S. 44;

Schneider v. New Jersey, 308 U. S. 147;

Murdock v. Pennsylvania, 63 Supreme Court Reports 870.

However, no case has been presented to the United States Supreme Court involving the exact question presented here wherein a state has made it a crime for one to solicit another to join a labor union without first obtaining a license, and where the state has absolutely prohibited the solicitation of union members by aliens and persons convicted of a felony whose rights have not been fully restored.

The issue raised by the Appellant's contention that the Statute constitutes class legislation, that it is discriminatory and deprives Appellant of the equal protection of the laws as guaranteed by the 14th amendment to the Constitution of the United States has never been decided by the United States Supreme Court. The Statute is directed solely against those who solicit members for labor unions. No Texas statute requires persons who solicit for any other voluntary non-profit association to obtain a license. The enactment of this Statute is an attempt to "impede and obstruct the organization of workers in the State of Texas and constitutes discriminatory legislation directed against labor unions.

In reaching its conclusion that the Statute is constitutional, the Texas Supreme Court compared the licensing of those who solicit members for labor unions with stock salesmen and insurance, railway and real estate agents. The right of free speech as guaranteed by the 14th Amendment has been placed by the United States Supreme Court on a different level than property rights protected under the same amendment, and regulations which may be within the police power of the State to make with respect to those engaged in business for a profit are not valid with respect to those who exercise civil rights where such regulations curtail and limit the exercise of such rights. *West Virginia v. Barnette*, 319 U. S. 624.

With respect to aliens and persons convicted of a felony whose rights have not been fully restored, the Statute even more clearly constitutes class legislation and unreasonable discrimination against these two classes of persons. Under the Statute these persons are absolutely prohibited from soliciting members for a union and may not even apply for a license. The issue raised with respect to the right of the State to prohibit the exercise of civil rights by these

two excepted classes has never been expressly passed upon by the Supreme Court of the United States.

The issue raised by Appellant's contention that the Statute imposes an undue burden upon interstate commerce in violation of Article I, Section 8 of the United States Constitution, and that it is in conflict with the National Labor Relations Act in violation of Article VI of the United States Constitution is important to the determination of the rights of labor unions under the National Labor Relations Act. The right to organize workers into a union necessarily carries with it the right to ask workers to join a union. This right is guaranteed by the National Labor Relations Act. However, the Statute, by limiting and curtailing the right with respect to certain persons and by absolutely prohibiting the exercise of this right by aliens and persons convicted of a felony whose rights have not been fully restored, directly conflicts with the purposes and express provisions of the National Labor Relations Act.

Furthermore, several other states (Kansas, Alabama) have recently enacted laws containing provisions similar to the Statute here involved. The rights of labor unions and their members under such statutes will remain in a condition of uncertainty with consequent harmful effects upon labor unions and their members until this uncertainty is resolved. A decision by the Supreme Court of the United States in this case will remove the uncertainty now existing by deciding whether a state may require a person to obtain a license before soliciting a member and whether a state may prohibit aliens and persons convicted of a felony whose rights have not been fully restored from soliciting persons to join labor unions.

Cases Sustaining the Jurisdiction of the Supreme Court of the United States.

1. Jurisdiction to entertain an appeal from the decision of a State Court denying a petition for writ of habeas Corpus. *People v. Zimmerman*, 278 U. S. 63.

2. Jurisdiction to entertain an appeal from the decision of a State Court denying a petition for writ of habeas corpus where Appellant is found guilty of contempt of court. *Tinsley v. Anderson*, 171 U. S. 101.

3. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State statute abridges freedom of speech guaranteed by the 14th Amendment to the Constitution of the United States. *Cantwell v. Connecticut*, 310 U. S. 296.

4. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State statute deprives Appellant of the equal protection of the law, as guaranteed by the 14th Amendment to the Constitution of the United States. *Yick Wo v. Hopkins*, 118 U. S. 356, *Mellinckrodt Chemical Works v. State of Missouri*, 238 U. S. 41.

5. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State statute imposes an undue burden upon interstate commerce in violation of Article I, Section 8, of the Constitution of the United States. *International Textbook Company v. Pigg*, 217 U. S. 91.

6. Jurisdiction to entertain an appeal of a State court on the ground that a State statute conflicts with a Federal

statute in violation of Article VI of the United States Constitution, *Davis v. Elmira Sav. Bank*, 161 U. S. 275.

Therefore the Appellant, R. J. Thomas, respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 344(a) of Title 28 of the United States Code.

Respectfully submitted,

LEE PRESSMAN,
ARTHUR J. MANDELL,
HERMAN WRIGHT,
ERNEST GOODMAN,

*Attorneys for R. J. Thomas, Relator
and Appellant.*

APPENDIX "A".**Opinion of the Supreme Court of Texas.**

No. 8160.

Ex Parte R. J. Thomas.

This is an original habeas corpus proceeding filed in this Court by relator, R. J. Thomas, to obtain his release from a judgment in contempt imposed by a trial court. The action involves the validity of Section 5 of House Bill No. 100, Acts 1943, 48th Legislature, Chapter 104, page 180 (Vernon's Annotated Texas Statutes, Art. 5154a), which Act prescribes certain regulations applicable to labor unions.

The provisions of the Act pertinent to the action here under consideration are as follows:

"Section 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

"It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

"Sec. 2. * * * (c) 'labor organizer' shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union."

"Sec. 5. All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b)

his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation, 'labor organizer'; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership."

"Sec. 11. If any labor union violates any provision of this Act, it shall be penalized civilly in a sum not exceeding One Thousand Dollars" (\$1,000) for each such violation, the sum recovered as a penalty in a Court of competent jurisdiction, in the name of the State, acting through an enforcement officer herein authorized. Any officer of a labor union and any labor organizer who violates any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a Court of competent jurisdiction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500) or by confinement in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment."

"Sec. 12. The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts."

"Sec. 14. The provisions of this Act are to be liberally construed so as to effectuate the purposes expressed in the preamble and in such manner as to protect the rights of laboring men to work and/or to organize for their mutual benefit in connection with their work; nor shall anything

in this Act be construed to deny the free rights of assembling, bargaining, and petitioning, orally or in writing with respect to all matters affecting labor and employment."

"Sec. 15. If any Section or part whatsoever of this Act shall be held to be invalid, as in contravention of the Constitution, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid."

The State filed suit in the trial court, alleging that the relator was a labor organizer within the meaning of the Act, who for pecuniary or financial consideration was engaged in soliciting members for a certain labor union; that he had not previously applied to nor obtained from the Secretary of State an organizer's card, as provided for in Section 5 of the Act; and that he was threatening to and would violate the provision of said Section 5 of the above Act by soliciting members for said labor union in Texas, unless he was restrained from so doing. The trial court issued a temporary restraining order and caused notice thereof to be served on the relator. Thereafter the relator, who was a paid representative of the union, violated the terms of the injunction by soliciting members for said union without having first registered with the Secretary of State as provided for in said Section 5. After a hearing he was adjudged to be in contempt of court and his punishment fixed at a fine of \$100.00 and confinement in jail for three days.

There is no question as to the sufficiency of the pleadings or the regularity of the proceedings in the contempt action, nor is there any contention that the facts were insufficient to show a violation of Section 5 of the Act. Relator's counsel in his argument before this Court conceded the existence of the necessary factual basis for the judgment in the contempt proceedings. His only contention is that said Section 5 of the Act violates the provisions of Article I, Section 8, of the State Constitution, which prohibits the enactment of any law abridging or curtailing the right of freedom of speech, and Article XIV, Section 1, of the Federal Consti-

tution, which prohibits a state from enacting any law abridging the privileges and immunities of a citizen of the United States or depriving any person of his liberty.

The right of the State under its inherent police power to regulate labor unions in order to protect the public welfare appears to be almost beyond question. In recent years, and particularly during the war, the necessity for and the power of labor unions and the effect of their operation upon the general public welfare have been fully demonstrated. As said in the preamble to the Act here under consideration, labor unions enter into practically every business and industrial enterprise, and greatly affect the economic condition of the country. Under our present social system millions of employees bargain for and secure their rights, such as wages, hours of labor, and other working conditions, through labor organizations. In addition, large sums of money are contributed in the form of dues by the employees for the support of the unions. The manner in which these unions function for the protection of their members greatly affects the economic life of the individual worker. Because of the large membership in a single union, and the limited opportunity of the individual member to personally familiarize himself with the manner in which his union is operated makes it impossible for the individual worker to protect himself in his own right against its mismanagement. These circumstances present a field for legislation by the State for the protection of the rights of the laborer as well as the general public.

The government under its police power always has the right to enact any and all legislation that may be reasonably necessary for the protection of the health, safety, comfort, and welfare of the public. 9 T. J. 503; *Halsell v. Ferguson*, 109 Tex. 144, 202 S. W. 317, 321; *Bradford v. State*, 78 Tex. Cr. Rep. 285, 180 S. W. 702; *Wylie v. Hays*, 114 Tex. 46, 263 S. W. 563.

Legislation by the National Congress regulating the relationship between labor unions and employers by the National Labor Relations Act of 1935 (U. S. C. A., Sec. 151 et seq.), commonly called the Wagner Act, was sustained under the commerce clause of the Federal Constitution.

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 81 L. Ed. 893, 57 S. Ct. 615, 108 A. L. R. 1352. Similar Acts by State Legislatures have been sustained under the police power of the State. Fenske Bros. v. Upholsterers International Union, 358 Ill. 239, 193 N. E. 112; 97 A. L. R. 1318; Wisconsin Labor Relations Board v. Fred Rueping Leather Co., 228 Wis. 473, 279 N. W. 673; Allen-Bradley Local No. 1111 v. Wisconsin Employment Relation Board, 237 Wis. 164, 295 Ill. App. 323, 14 N. E. (2d) 991; Davega City Radio, Inc. v. State Labor Relations Board, 281 N. Y. 13, 22 N. E. (2d) 145.

The power to regulate and supervise has been extended to unincorporated associations and societies, such as Ku Klux Klan. The People of the State of New York v. Charles F. Zimmerman, 241 N. Y. 405, 150 N. E. 497, 43 A. L. R. 909, affirmed 278 U. S. 63, 73 L. Ed. 184, 63 S. Ct. 84.

The fact that the Federal Government has legislated on the subject under the commerce clause does not exclude the right of the State to legislate on the same subject under its police power. Wisconsin Labor Relation Board v. Fred Rueping Leather Co., 228 Wis. 473, 279 N. W. 673.

We are therefore convinced that the regulation of labor unions is a proper subject for legislation under the police power by this State. It was for the Legislature, and not the courts, to say whether such legislation was necessary or was best for the interest of the people of this State.

We are brought then to a consideration of whether Section 5 of the Act here under consideration constitutes an abridgement or curtailment of the right of free speech or the deprivation of a person of his liberty, as guaranteed by the Constitution.

A careful reading of the section of the law here under consideration will disclose that it does not interfere with the right of the individual lay members of unions to solicit others to join their organization. It does not affect them at all. It applies only to those organizers who for a pecuniary or financial consideration solicit such membership. It affects only the right of one to engage in the business as a paid organizer and not the mere right of an individual to express his views on the merits of the union. Furthermore,

it will be noted that the Act does not require a paid organizer to secure a license, but merely requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union. The Act confers no unbridled discretion on the Secretary of State to grant or withhold a registration card at his will, but makes it his mandatory duty to accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith.

That the Legislature was justified in concluding that that part of the Act here under consideration was necessary for the protection of the general welfare of the public, and particularly the laboring class, can hardly be doubted. As previously stated, membership in labor unions runs into millions. Not infrequently thousands of employees work at a single plant. It is impossible for them to know each other, or to know those who purport to represent the various unions. When a laborer is approached by an alleged organizer it is impossible for him to know whether he is an imposter or whether he has authority to represent the union which he purports to represent. Thus a great field for the perpetration of fraud both as against the laborer and the union is presented. It is important to the laborer that he be able to know that the representations of the purported organizer who approaches him with a request that he join the union and pay his dues in order to be able to work on a particular job are the representations of an accredited agent of the union and that the promises of such representative will be respected and carried out by the union; and it is equally important to the union that the purported representative be identified in order that pretenders under the guise of authority from the union may not misrepresent the organization, nor collect and squander funds intended for its use. The law is for the protection of both the laborer and the union.

Nothing is better established than the power of the Legislature to enact legislation for the purpose of preventing "fraud and deceit, cheating and imposition." 16 C. J. S. 555; *Standard Stock Food Co. v. Wright*, 225 U. S. 540, 56 L. Ed. 1197.

The regulation does not appear to be an unreasonable one. It is true that the Act interferes to a certain extent with the right of the organizer to speak as the paid representative of the union, but such interferences are not necessarily prohibited by the Constitution. The State under its police power may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they are reasonably necessary for the protection of the general public. 12 C. J. 952. See also 9 T. J. 503; *Cox v. New Hampshire*, 312 U. S. 569, 85 L. Ed. 1049.

In the case of *Carpenters Union v. Ritter's Cafe*, 315 U. S. 722, 725, 726, it is said:

"Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the State to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain. Whenever state action is challenged as a denial of 'liberty,' the question always is whether the state has violated 'the essential attributes of that liberty.' Mr. Chief Justice Hughes in *Near v. Minnesota*, 283 U. S. 697, 708. While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that Clause postulates the authority of the states to translate into law local policies 'to promote the health, safety, morals and general welfare of its people. * * * the limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise.' *Ibid.*, at 707."

Many statutes have been enacted in this State which curtail or limit the right of one to operate or speak as the agent of another. For example: "The Securities Act" (Art. 600a, Vernon's Civil Statutes) prohibits an agent from selling securities for another without a permit from the Secretary of State. Insurance agents are required to secure licenses before being permitted to sell insurance. Art. 5062a, Vernon's Civil Statutes. Railway agents are required to have a certificate of authority before being permitted to sell railway tickets. Art. 6415, Rev. Civ. Stat. 1925. A real estate broker is required to have a license before he may act as the agent for another. Art. 6573a, Vernon's Civil Statutes. Likewise, Congress has enacted

a statute which requires agents of foreign governments to register with the Secretary of State before being permitted to so act. 22 U. S. C. A., Sec. 601. Numerous other illustrations could be given. None of these statutes have been held unconstitutional on the ground that they abridged the right of free speech or otherwise unnecessarily deprived a person of his liberty.

In our opinion, the Act imposes no previous general restraint upon the right of free speech. It does not impose a general restraint on the right to solicit others to join the union, nor does it vest unlimited discretionary power in the Secretary of State to grant or refuse a registration card to any one qualified under the Act to solicit members for the unions. It merely requires paid organizers to register with the Secretary of State before beginning to operate as such.

In the case of *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352, the Supreme Court condemned the right to impose censorship upon the right of religious worship or free speech by vesting in some officer discretionary power to issue or to refuse to issue permits for the sale and distribution of literature, but in that connection said:

"The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise."

The requirement of an organizer's card for paid labor organizers who solicit in Texas is nothing more than a "general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds." See also the case of *Cox v. New Hampshire*, 312 U. S. 569, 85 L. Ed. 1049, wherein the Supreme Court sustained a statute which required the obtaining of a license as a condition precedent to the right to parade in a city.

In the case of *City of Manchester v. Leiby*, 117 Fed. (2d) 661 (certiorari denied), 61 S. Ct. 838, 313 U. S. 562, 85 L. Ed. 1522, the court had under consideration the validity of an ordinance of the City of Manchester which required an applicant to register before being permitted to sell literature on the streets. In discussing the question the court there said:

"The challenged ordinance is modest in scope. It puts no restriction upon the giving away of books, papers, magazines, etc., at any time and at any place. Persons desiring to 'sell or expose for sale' such literature on the streets or other public places are required to identify themselves before a designated official who keeps a record of the name and age of the applicant. For a nominal deposit a badge is issued to the applicant, who must wear the same conspicuously while selling on the streets, so that citizens and police may readily see that the seller has complied with the ordinance. It is provided that this deposit is to be returned upon surrender of the badge. As we read the ordinance the superintendent of schools has no function to pass on the character of the literature which the applicant proposes to expose for sale; nor has he any discretion to grant or withhold the license. On the contrary, it is his simple duty to issue the badge upon receipt of the application 'properly executed.' Aside from the regulations applicable to children under fourteen, all that the ordinance does is to enable the city to keep track of persons selling literature on the streets."

"By contrast the Manchester ordinance now before us contains no element of prior censorship upon the distribution of literature. It requires only a simple routine act of obtaining a badge of identification before a person can sell on the streets. This reasonable police regulation, in our opinion, imposes no substantial burden upon the freedom of the press or the free exercise of religion."

The case of *Lovell v. City of Griffin*, 303 U. S. 444, 82 L. Ed. 949, relied on by relator, is not in point. The ordi-

nance there under consideration vested in the city manager the discretionary power to grant or refuse a permit to distribute literature of any kind at any time and in any manner, and thereby effectively imposed a censorship on the right to distribute such literature. The same is true of the cases of *Hague v. Committee for Industrial Organization*, 307 U. S. 496, 515, 516, 83 L. Ed. 1423, 1436, 1437, 59 S. Ct. 954; *Schneider v. Irvington*, 308 U. S. 147, 160, 84 L. Ed. 155, 164, 60 S. Ct. 146; *Cantwell v. Connecticut*, 310 U. S. 296, 306, 307, 84 L. Ed. 1213, 1219, 1220, 60 S. Ct. 900, 128 A. L. R. 1352. For an analysis of the opinions in those cases see *Cox v. New Hampshire*, 312 U. S. 569, 85 L. Ed. 1049.

We are of the opinion that the part of the Act in question is valid, and that the trial court acted within its authority in adjudging the relator guilty of contempt. Relator's petition for discharge will be denied, and he will be remanded to the custody of the Sheriff of Travis County, in order that the judgment of the district court may be enforced.

JAMES P. ALEXANDER,
Chief Justice.

Opinion delivered October 27, 1943.



United States of America
IN THE
Supreme Court of the United States

Case No. [REDACTED] 14

R. J. THOMAS,
Appellant,
vs.
H. W. COLLINS,
Appellee

BRIEF IN OPPOSITION TO MOTION TO
DISMISS APPEAL FOR WANT
OF JURISDICTION

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United States of America
IN THE
Supreme Court of the United States

Case No. 569

R. J. THOMAS,
Appellant,
vs.
H. W. COLLINS,
Appellee

**BRIEF IN OPPOSITION TO MOTION TO
DISMISS APPEAL FOR WANT
OF JURISDICTION**

In its Statement in Opposition to Jurisdiction the Appellee apparently seeks dismissal of the appeal for want of jurisdiction on the basis of a single argument addressed to the merits. The present brief is submitted for the purpose of correcting a misconception of fact which may be created by the Appellee's statement.

Appellee denies that the contempt order abridges Appellant's right of free speech, and states that the issue involves not Appellant's "right to make a speech" but his solicitation "of a particular individual to join a named union." In the interests of accuracy it should be noted that the restraining order which was the basis of the contempt imprisonment prohibited Appellant from "soliciting members for Local Union 1002 of the O. W. I. U. and from soliciting memberships in any other labor union affiliated with the C. I. O. and members of any other labor union affiliated with the C. I. O. while said defendant is in Texas
• • •"

The proofs in the contempt proceeding show that Appellant made a speech in which he pointed to the war-time contribution of labor unions, to the importance of membership in unions particularly as a means of furthering the war effort, and on the basis of his discussion called upon all the workers whom he addressed, including an individual named worker in particular, to join the Oil Workers International Union, C. I. O. Appellee, however, separates those sentences in Appellant's speech which constitute a request to join the union as constituting the language which Appellant was forbidden to utter without a license.

It is not clear whether it is Appellee's contention (a) that those sentences which constituted "solicitation" do not constitute "speech" under the 1st and 14th Amendments, or (b) that because "a particular individual" was named and requested to join "a named union" the protection of the Bill of Rights is not applicable.

To either contention a brief and complete answer is the record in the contempt proceeding which shows that the "solicitation" in this case consisted in essence of oral argument with respect to the objectives of labor organizations and an oral request that the assemblage and the named

individual join in the achievement of that objective. With respect to the second contention, while it is difficult to perceive any significance in the fact emphasized by the Appellee that a specific union was named by the Appellant in his speech, certainly a complete answer lies in the language of the restraining order itself which constituted a clear general restraint upon Appellant's free speech.

Respectfully submitted,

LEE PRESSMAN,
ERNEST GOODMAN,
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1943

No. [REDACTED] 14

R. J. THOMAS, *Appellant*,

vs.

H. W. COLLINS, *Sheriff of Travis County, Texas*

Appeal From the Supreme Court of the State of Texas

BRIEF FOR THE APPELLANT

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IN THE
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OCTOBER TERM, 1943

No. 569

R. J. THOMAS, *Appellant*,

vs.

H. W. COLLINS, *Sheriff of Travis County, Texas*

Appeal From the Supreme Court of the State of Texas

BRIEF FOR THE APPELLANT

OPINION BELOW

The opinion of the Supreme Court of Texas in this case is reported in 174 S W (2d) 958, and is also found in the Record at pages 318-326. No written opinion was issued by the State District Court.

JURISDICTION

This case is brought here by appeal in accordance with the provisions of Section 861(a) of Title 28 of the United States Code. This Court's jurisdiction arises under the provisions of Section 237(a) of the Judicial Code (28 U.S.C. Section 344 (a)). In the present case the validity of a statute of the State of Texas has been drawn in ques-

tion on the ground of its being repugnant to the Constitution and laws of the United States, and a decision in favor of the validity of the statute has been rendered by the Supreme Court of the State of Texas.

Statement as to jurisdiction has been separately filed in accordance with Rule 12, Section 1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Constitutional Provisions

Amendment I of the federal Constitution, which provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment XIV, Section 1 of the federal Constitution, which provides:

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article VI of the federal Constitution, which provides:

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

State Statutory Provisions

House Bill 100, Acts of the 48th Legislature, 1943, of the State of Texas (Chapter 104, Vernon's Annotated Texas Statutes, Article 5154-A):

"Section 5. Organizers. All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliation, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation 'labor organizer'; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership."

Section 2(c) defines the term "labor organizer" as follows: "Labor organizer shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union";

"Section 4(a). It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored."

"Section 12. Enforcement by Civil Procedure. The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application

of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunction, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts."

STATEMENT OF THE CASE

Appellant, R. J. Thomas, is president of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the CIO, a voluntary unincorporated labor association, hereinafter referred to as the UAW. Petitioner is also one of the vice presidents of the Congress of Industrial Organizations, an unincorporated association composed of a number of nation-wide labor organizations, hereinafter referred to as the CIO. Appellant is a resident of the City of Detroit, State of Michigan. (R.22-23)

Appellant is paid a salary for his work as president of the UAW, and serves as vice president of the CIO without salary. (R. 30, 32, Defendant's Exh. 6 and 7, R. 102, 197-200)

Appellant had been invited by the Oil Workers International Union, an affiliate of the CIO, to address a meeting on the evening of September 23, 1943, at the city of Pelley, Texas. The meeting was called under the auspices of the Oil Workers International Union incident to its campaign to organize the employes of the Humble Oil Company, whose plant is located in the adjoining community of Baytown. A petition for an election had been filed by the Oil Workers International Union with the National Labor Relations Board; a hearing had been had before a Trial Examiner and the Union was awaiting the Board's decision for direction of an election. (R. 33)

On September 22nd, shortly after the Appellant had arrived at Houston, newspaper accounts were published to the effect that Appellant intended to solicit workers to join the Union at the meeting on September 23rd without first obtaining a license as required by the Statute. (R. 34-35) Thereupon, on the same day, a complaint was filed in the 53rd District Court in Austin, Travis County, a distance of 167 miles from Houston, by the State of Texas through its Attorney General, seeking a temporary restraining order and temporary and permanent injunction to restrain Appellant from soliciting members in any labor union affiliated with the CIO without first obtaining the license required by the Statute. (R. 291-294) The District Judge at 4 p. m. on September 22, 1943, issued an order to show cause returnable before him on September 25, 1943, and an *ex parte* temporary restraining order enjoining Appellant as follows (R. 294-295, 315-317):

"IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that R. J. Thomas be and he is hereby restrained and enjoined from soliciting memberships in Local Union No. 1002 of the OWIU and members for Local Union 1002 of the OWIU and from soliciting memberships in any other labor union affiliated with the CIO and members of any other labor union affiliated with the CIO while said defendant is in Texas, without first obtaining an organizer's card as required by law."

The order to show cause and temporary restraining order were served on Appellant at Houston on September 23, 1943, at 2:22 o'clock p. m., approximately 5 hours prior to the scheduled meeting. (R. 35)

In reliance upon his constitutional rights, Appellant decided to deliver his speech as planned and to solicit members at the meeting without first obtaining a license.

The meeting was held on the evening of September 23rd on the grounds next to the Pelley City Hall. Among the

speakers were the Mayor of Pelley, the assistant National Director of the Oil Workers Organizing Campaign, the representative of the United Steelworkers of America, the sub-regional director of the Congress of Industrial Organizations, and the Appellant, R. J. Thomas. The audience consisted mainly of workers of the Humble Oil Company. (R. 37-39.)

Appellant's speech is a part of the record in this case. (Defendant's Exh. 10, R. 41, 279-290.) He related to the audience the advantages of joining a union, the important role played by unions in the war effort and the meaning of the war to workers; he urged all the oil workers in the audience, and one worker by name, to join the Oil Workers International Union. The meeting was peaceful. (R. 10.) Appellant did not "sign up" any workers as members of the Union.

At the close of the meeting, Appellant as well as two other speakers were arrested for soliciting members to join the Oil Workers International Union without first obtaining a license as required by the Statute. After warrants had been issued and pleas of not guilty entered, they were released on bail pending trial.

The following morning a motion for contempt for violating the temporary restraining order was filed in the District Court for Travis County and an order for attachment was issued for the arrest of Appellant. At the hearing on the contempt motion on September 25, Appellant pleaded not guilty to the charge of contempt, and challenged by written pleading and orally the constitutionality of the temporary restraining order and of the Statute, insofar as they prevented him from soliciting workers to join a union without first obtaining a license. (R. 1, 45, 299-302.)

After hearing the testimony and overruling Appellant's motion to dismiss and quash, the District Judge found Appellant guilty of contempt of court for "violation of the

law and of the order of this court" and sentenced him to "imprisonment for a period of three days and a fine of One Hundred (\$100.00) Dollars." (R. 309.)

Thereupon Appellant was remanded to the custody of the Sheriff of Travis County, Texas, but was released within a few hours upon filing a bond set by the Chief Justice of the Supreme Court of the State of Texas upon a petition for writ of habeas corpus filed in that court.

In his petition for writ of habeas corpus and in the brief filed and arguments made in his behalf before the Supreme Court of the State of Texas, Appellant claimed that said Statute, insofar as it prevented Appellant from soliciting members into a union without first obtaining a license, and the temporary restraining order issued thereunder, were unconstitutional on the grounds that they deprived Appellant of his right of free speech, that said Statute constituted class legislation and that it was discriminatory and deprived Appellant of the equal protection of the laws as guaranteed by the 14th Amendment to the federal Constitution. (R. 312-314.)

On October 27, 1943, the Supreme Court of the State of Texas rendered its opinion and judgment sustaining the constitutionality of the Statute and the temporary restraining order, denying Appellant's petition for writ of habeas corpus and remanding Appellant to the custody of the Sheriff of Travis County. (R. 318-326.) On November 24, 1943, the Court denied Appellant's motion for rehearing. (R. 327-336.)

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of the State of Texas erred:

(1) In holding and deciding that the Statute and temporary restraining order, as applied to Appellant, are not in conflict with, and a violation of the provisions of the

14th Amendment to the federal Constitution in that said Statute and temporary restraining order assume and seek :

(a) to deprive Appellant and certain other citizens of the United States and of the State of Texas, of rights, privileges and immunities secured to citizens of the United States and of said State;

(b) to deprive Appellant and other citizens and persons resident in the United States and in the State of Texas of liberty and property without due process of law;

(c) to deprive and to deny to Appellant and certain citizens and persons within the jurisdiction of the State of Texas, the equal protection of the law.

(2) In failing to hold that said Statute constitutes class legislation by its arbitrary and unreasonable discrimination against labor unions and their members and by its denial to Appellant of the equal protection of the law, and is therefore invalid and unconstitutional under the provisions of the 14th amendment to the federal Constitution.

(3) In failing to hold that said Statute, by prohibiting aliens from asking a person to join a union, constitutes an abridgement of the right of free speech and a denial of the equal protection of the law as guaranteed by the 14th Amendment to the federal Constitution.

SUMMARY OF ARGUMENT

I.

The Statute and the Temporary Restraining Order on Which the Contempt Judgment Is Based, Are Unconstitutional in Requiring Appellant to Obtain a License Before Soliciting Workers to Join a Union, Thereby Depriving Appellant of His Civil Rights as Guaranteed by the Fourteenth Amendment to the Federal Constitution.

A. The Requirement of a License as a Prerequisite to Appellant's Right to Make His Speech in the Pres-

ent Case Cannot Be Supported by Any Analogy to the Licensing of Business and Commercial Activities.

1. This Court has made a sharp distinction between the exercise of civil rights and the right to engage in business or commercial activity, and has declared that the Constitution affords a far higher degree of protection against interference with civil rights.
2. Discussion of labor problems and solicitation of membership in labor organizations constitutes an exercise of civil rights. This Court has expressly so declared in decisions protecting the employee's right of free speech and in decisions protecting the employer's right of free speech.
3. Labor organizations, fundamentally, are formed and operate as the only effective medium whereby an individual employee may exercise the civil rights guaranteed to them by the Constitution. An interference with their right to solicit membership in their organizations constitutes an interference with the only means that they have to exercise the civil rights which this Court has declared to be theirs.
4. The fact that the Texas statute affects only "paid" organizers does not diminish its impact on civil rights.

B. The Texas Statute Imposes an Unconstitutional Previous General Restraint Upon the Right of Employees and Their Spokesmen to Solicit Members for Their Organization.

1. Previous general restraints of the character imposed by the Texas statute on the exercise of civil rights are invalid.
2. The Texas statute cannot be supported by the doctrines of the cases which have upheld the power of a State or municipality to require mere routine and reasonable identification or registration of individuals for protection of the public in the use of the public streets and highways or in the public solicitation and collection of funds.
 - (a) This statute does not involve a mere registration or identification requirement but in practical effect severely limits and to some extent precludes the effective exercise of constitutionally protected civil rights of Texas workers. In actual operation the statute puts the applicant to substantial and unreasonable burden and delay. In the light of the realities and necessities of labor organization the statute imposes unreasonable and serious burdens which are real limitations on the right of free speech both by exposing employees to employer pressures and by delaying the exercise of the right of free speech under circumstances in which time is of the essence if the right is to have any meaning.
 - (b) Separate and apart from the prohibitive effects of the Texas statute on the exercise of civil rights, it cannot be supported because on the other side of the balance there is not merely no "clear and present danger" to

any interest which the State might legitimately seek to protect, but there is literally no reasonable relationship between this statute and any conceivable evil which the State of Texas might seek to eliminate.

II.

The Statute Constitutes Class Legislation, Is Discriminatory and Deprives Appellant of the Equal Protection of the Laws as Guaranteed by the 14th Amendment of the Federal Constitution.

- A. The Statute Makes an Arbitrary and Unreasonable Discrimination Against Labor Organizations.
- B. The Statute Makes an Arbitrary and Unreasonable Discrimination Against Non-Citizens.

ARGUMENT

I.

The Statute and the Temporary Restraining Order on Which the Contempt Judgment Is Based, Are Unconstitutional in Requiring Appellant to Obtain a License Before Soliciting Workers to Join a Union, Thereby Depriving Appellant of His Civil Rights as Guaranteed by the Fourteenth Amendment to the Federal Constitution.

In analyzing the exact nature of the issues before this Court it is important to consider precisely what the Appellant was engaged in doing and precisely what the restraining order issued under the Texas statute purported to forbid his doing.

There is no issue but that the full and complete extent of the forbidden activities of the Appellant was the making of a speech. There is no issue as to the fact that the making of this speech was the only act in which Appellant engaged and for which it is the State's contention that he was required to have a license.

Appellant did not parade on the public streets.

Appellant did not engage in any activity which involved actual or even possible noise or disturbance to the public.

Appellant did not seek or secure the use of any public facilities.

Appellant came into the State of Texas for the sole purpose of addressing a group of workers and urging on them the desirability of membership in unions generally and in the Oil Workers' Union in particular.

Appellant's sole activity in the State of Texas was to make an address from the same platform as did the Mayor of the City and representatives of other unions. Appellant's sole activity in the making of this address was to describe the meaning of the war to the workers whom he was addressing, the role played by unions in the war effort and the values of union membership. Having described the significance of the war to American workers and the reasons for the activities of the union in support of the war and the desirability of membership in the unions as a means of aiding in the prosecution of the war, Appellant concluded with a plea to workers in his audience to join the union in its activities and with a plea to one named worker in the audience to join the union.

Appellant did not solicit or receive any funds or dues.

Appellant did not "sign up" any workers into any union.

The licensing requirement of the statute did not apply to the collection of funds or the actual signing up of members. Presumably under the statute Appellant could have engaged in either or both of these activities without a license and with full legality so long as he did not "solicit." Appellant's "crime" consisted of "solicitation" without a license.

The activity for which Appellant was required to have a license and which, in the absence of a license was rendered criminal by a State statute, was simply and solely the act of addressing the workers on the achievements of unions, the benefits of unionism, and concluding the address with a plea to the audience generally and to a named worker in the audience to join a union. It is the State's contention that in order to be permitted to make such an address and such a plea, Appellant could constitutionally be required to travel several hundred miles to and from the State capital at Austin in order to present his credentials, prove his qualifications, and receive authorization from the State, or to engage in correspondence with the Secretary of State at the capital at Austin for some time prior to the actual conduct of the meeting in order to accomplish the same result.

On the face of these circumstances there would seem to be little room for doubt that what is involved here was an attempted exercise of the right of free speech and assembly by the Appellant and an unwarranted interference with that right by the State of Texas. The State, however, has denied that this case involves an exercise of free speech. The State goes on to assert that even if free speech is involved, the State statute does not impose an unconstitutional infringement on the right.

On the first score the State seeks to justify its action by analogy to licensing regulations imposed upon various types of business and commercial enterprises. On this basis the State in effect contends that what is regulated here is not an exercise of civil rights but a business or commercial enterprise entitled to no greater constitutional protection than are business and commercial enterprises generally.

On the second score the State apparently contends further that even in the realm of the exercise of civil liberties the infringement involved in the present case is valid under the principles of those cases which have upheld State action in the interest of peace and order on the public streets.

These two contentions pose the basic issues in this case. We shall address ourselves to each of them in turn.

A. The Requirement of a License as a Prerequisite to Appellant's Right to Make His Speech in the Present Case Cannot Be Supported by Any Analogy to the Licensing of Business and Commercial Activities.

1. *This Court Has Made a Sharp Distinction Between the Exercise of Civil Rights and the Right to Engage in Business or Commercial Activity, and Has Declared That the Constitution Affords a Far Higher Degree of Protection Against Interference With Civil Rights.*

There can be no question as to the significance and importance of the distinction between the State's power to regulate and even prohibit under certain circumstances the conduct of certain types of business and commercial enterprises and on the other hand the State's power where an exercise of civil rights falling within the province of the First Amendment is involved. As this Court said in *Murdock v. Pennsylvania*, 319 U. S. 105, 111:

"The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills."

See also *West Virginia v. Barnette*, 319 U. S. 624.

That the line may not always be capable of easy delineation does not of course negate the basic distinction. In *Valentine v. Chrestensen*, 316 U. S. 52, this Court had before it an attempt to shield blatantly commercial advertising material behind a collateral injection of comment on the conduct of public officials. The Court was called upon to make and did make a determination as to whether the situation involved, in the words of the distinction stated in the quotation from the *Murdock* case, *supra*, the "right to use the press for expressing one's views" or merely the issuance of "commercial handbills."

For guidance in deciding in the present case whether Appellant's activities fall within the realm of expression of views or in the realm of "commercial handbills," we find readily available indicia in numerous decisions of this and other courts.

On the general principle this court said in *Thornhill v. Alabama*, 310 U. S. 88, 101:

"The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times. The Continental Congress in its letter sent to the Inhabi-

tants of Quebec (October 26, 1774) referred to the 'five great rights' and said: 'The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honorable and just modes of conducting affairs.' *Journal of the Continental Congress, 1904 Ed., vol. I, pp. 104, 108.* Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."

Identical in spirit is the declaration of the highest court of the State of New Jersey in *State v. Butterworth*, 104 N. J. L. 549, 142 Atl. 57:

"The right of the people to meet in public places to discuss in open and public manner all questions affecting their substantial welfare, and to vent their grievances, to protest against oppression, economic or otherwise, and to petition for the amelioration of their condition, and to discuss the ways and means of attaining that end, were rights confirmed and guaranteed them by the Magna Charta, Petition of Rights, and the Bill of Rights, the mainstay of the British Constitution, and the bases of both our Federal and State Constitutions."

2. Discussion of Labor Problems and Solicitation of Membership in Labor Organizations Constitutes an Exercise of Civil Rights.

In connection with the formation and functioning of labor unions, however, it is not even necessary to debate the applicability of these general definitions of the scope of operation of the guarantees of free speech, press and assembly. There might perhaps have been doubt in years gone by. But with the acceptance of labor organizations

as a vital force in our society and with the growing significance of problems affecting employer-employee relations, working conditions, and employee welfare, this Court has answered the question and has consistently ruled discussions of matters in these realms to constitute a part of that area of human activity so basic to the democratic process, the exercise of the civil rights assured by the First Amendment.

a) *Cases protecting the employee's right of free speech*

In *Thornhill v. Alabama*, 310 U. S. 88, 102-103, this Court said:

"In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. *Hague v. CIO*, 307 U. S. 496; *Schneider v. State*, 308 U. S. 147, 155, 162, 163. See *Senn v. Tile Layers Union*, 301 U. S. 468, 478. It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations, such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger problem. We concur in the observation of Mr. Justice Brandeis, speaking for the Court in *Senn's* case (301 U. S.

at page 478, 57 S. Ct. at page 862, 81 L. Ed. 1229): 'Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' "

Employees through their labor organizations endeavor to carry on the "free discussion concerning the conditions in industry and the causes of labor disputes" by many means. These means may include the carrying of signs in the activity usually designated as picketing. The means may include the distribution of leaflets and the holding of meetings. The discussions thus carried to the public and to fellow employees may include discussion of specific disputes with specific employers or of general conditions in industry and the role of labor unions. In each form which this free discussion among employees may take it has received the specific assurance by this Court of constitutional protection under the guarantee of freedom of speech, press and assembly.

In the *Thornhill* case the exercise of these rights through the medium of picketing was upheld. See also *AFL v. Swing*, 312 U. S. 321; *Wohl v. Bakery and Pastry Drivers*, 315 U. S. 769.

In *Schneider v. New Jersey*, 308 U. S. 146, it was the right of free comment and discussion through the distribution of handbills on matters involving labor relations that was recognized as a matter of public interest and significance and within the realm of protected civil rights. That the exercise of the right of free speech through the distribution of literature in connection with labor organization falls within as carefully protected a realm of personal rights under the Constitution as the distribution of literature for religious purposes has been specifically declared by this Court once more in *Martin v. City of Struthers*, 319 U. S. 141, 145-6:

" 'Pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people.' *Schneider v. State, supra*, 308 U. S. 164. Many of our most widely established religious organizations have used this method of disseminating their doctrines, and laboring groups have used it in recruiting their members. . . . Door to door distribution of circulars is essential to the poorly financed causes of little people."

In *Hague v. CIO*, 307 U. S. 496, the problem involved the exercise of these same rights not merely by picketing and handbills but further by the holding of meetings and the general dissemination of information. Even more significantly, the *Hague* case did not involve merely an individual labor dispute but the more general right to hold meetings and disseminate information on labor organizations, their functions and values. The opinion of Mr. Justice, now Chief Justice, Stone, for example, stated the issue before the Court to be the application of the guarantee of free speech and assembly under the First Amendment to protection against attempts by the public officers to prevent labor organizations "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." (307 U. S. at 525.)

Very specifically, the purpose of the meetings with which the city officials were enjoined from interfering was "to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work, and other terms and conditions of employment." (307 U. S. at 523.)

Thus, insofar as the area of operation of a labor organization is concerned—the area of employer-employee relationships, employee welfare, labor rights, social legisla-

tion—this Court has made perfectly clear that discussion in these realms constitutes discussion of matters of public, economic and social importance within the proper protection of constitutional guarantees of free speech. This Court in its decisions has removed any foundation for attempted analogies between licensing regulations imposing prerequisites to such discussion and licensing regulations attached to the sale of stock or the sale of insurance or the operation of a real estate brokerage.

b) Cases protecting the employer's free speech

Indeed, it should be recognized that under the doctrines thus far enunciated by the Courts, it is not only the employe's or the union's presentation of argument and discussion on these problems which is assured constitutional protection. A recent group of Federal court decisions, all of which have been denied review by this Court, have evolved the doctrine that employers when they speak on matters of unionization of their employes are using speech, insofar as it is disassociated from any coercion, in a realm which falls within constitutional protection. *NLRB v. American Tube Bending Co.*, 134 F. (2nd) 993 (C.C.A. 2nd) *cert. denied*, 64 S. Ct. 84; *NLRB v. William Davies Co.*, 135 F. (2nd) 179 (C.C.A. 7th) *cert. denied*, 64 S. Ct. 82; *NLRB v. Trojan Powder Co.*, 135 F. (2nd) 337 (C.C.A. 3rd) *cert. denied*, 64 S. Ct. 76; *NLRB v. Jacksonville Paper Co.*, 137 F. (2nd) 148 (C.C.A. 5th) *cert. denied*, 64 S. Ct. 84; Cf. *NLRB v. Virginia Electric & Power Co.*, 314 U. S. 469.

Under the language of these decisions an employer may apparently solicit his employes to refrain from joining a union and his speech is within the constitutional protection of free speech. In the absence of threats, coercion or intimidation he may apparently carry on his solicitation in writing, by word of mouth, by calling his employes into

meetings, or by distributing literature among them, and he is afforded constitutional protection against statutory interference.

In these cases, therefore, as in the *Thornhill*, *Hague* and *Schneider* cases, *supra*, this Court has declared matters affecting labor relations, labor organization, membership in labor unions, to fall within the realm of protected constitutional liberties. To uphold the contention of the State of Texas in the present instance that the activities of the Appellant may be analogized to the type of business and commercial activity which does not involve protected civil liberties would be to accord to the employer a greater area of protected civil rights than to the employe and the employes' organization.

3. *The Fundamental Nature of Labor Organizations as the Only Effective Medium for the Exercise of Employes' Civil Rights.*

The foregoing considerations are sufficient to dispose of the State's position on this aspect of the civil rights issue. In a broader consideration, however, the enactment of the challenged statute and the position taken by the State pose a more fundamental issue of public importance. It is an issue on which this Court has ruled, both implicitly and explicitly. It is an unfortunate fact that the State of Texas as well as several other States which have taken similar action in the past year have chosen to fly in the face of the principles enunciated by this Court.

In this broader aspect the problem before this Court is the extent to which the State is to be permitted to go in rendering ineffective the rights declared and guaranteed to American working men and women by the *Hague*, *Thornhill* and *Schneider* cases, by limiting or destroying the ability of employes to exercise those rights in the only manner

in which, in the main, those rights can be made realistically effective, namely, through mutual and concerted action on the part of employees.

The *Thornhill* case, for example, guaranteed to employees constitutional protection of their right to publicize the facts concerning a labor dispute, the facts concerning employer-employee relationships and the working conditions in industry. This of course is a right assured to each of the individual employees. It is equally clear, however, that it is a right which has meaning only to the extent that an individual employee is free to call upon fellow employees to join him in the exercise of the right. A single employee is free to engage in the exercise of free speech through picketing only to the extent that he is at the same time free to call upon his fellow employees to join him in the picketing within the limitations of order and lawful regulation. Similarly an employee cannot be said to be free to disseminate his views through leaflets if he is not protected in his right to call upon his fellow employees to join him in the distribution of the leaflets.

An attempt to distinguish between the right to think and speak and the right to call upon others to join in organization for the spreading of thoughts and ideas is, insofar as the individual working man is concerned, on a par with an attempt to limit civil rights to liberty of publication while denying liberty of circulation. The attempt to make such a distinction is not new to this Court. The same suggestion was made in the case of *Lovell v. Griffin*, 303 U. S. 444. This Court answered (at 452):

"The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U. S. 727, 733. The license tax in *Grosjean v. American Press Company*, *supra*,

was held invalid because of its direct tendency to restrict circulation."

What has been lacking in the position of the State and in the decision of the court below in this matter has been an appreciation of the basic nature of organizations of employes. The concept of employe organization arises from the recognition of the impotence of the individual employe faced with the single corporate organization which constitutes his employer. The thousands of employes of single employers or groups of employers have recognized their common problems and the necessity for assembling into organizations for the purposes of mutual discussion and the planning of mutual action. It is this process of organization and assembly and discussion and pooling of resources which makes possible the printing and distribution of leaflets, newspapers, pamphlets. It is this process of mutual assembly and consultation and discussion which makes possible the presentation of views and contentions to the employer and to the public.

This Court has long given realistic recognition to these basic facts concerning the nature of labor organization. Only recently, reiterating conclusions long accepted, the Court said (*NLRB v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33):

Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries v. Tri-City Central Trades Council*, 257

U. S. 184, 209, 42 S. Ct. 72, 78, 66 L. Ed. 189, 27 A.L.R. 360."

Labor organizations exist and act, and the organization for which Appellant spoke in the present case exists and acts, solely for the purpose of exercising and effectuating the rights assured in the *Thornhill*, *Hague* and *Schneider* cases.

To exercise their constitutional rights, to make it possible to reach their fellow workers and the public through leaflets, newspapers, meetings and similar media, workers have formed their organizations. To exercise their rights of free speech they have designated by democratic processes from among their own ranks spokesmen—spokesmen to speak on their behalf to their employers, spokesmen to speak on their behalf to other employes, and to urge the other employes to join in the common organization.

In their common assembly they have recognized the interrelationship of employes not merely in a single plant but throughout industries and throughout the nation. It is physically and economically impossible for an individual worker to exercise to its fullest extent his personal right of free speech, to reach his fellow employes throughout the country except by the formation of organizations of employes which enable the workers to designate individuals to act for them to reach other employes in all parts of the country, and to spread the views and aims and objectives for which all are joined in their mutual organization.

Is it possible then for the State of Texas to recognize the rights declared in the *Thornhill*, *Hague* and *Schneider* cases while at the same time contending that the realm of protected free speech does not include the act of soliciting and persuading and inducing employes to join in the common organization which exists as the sole means of effectuating the rights declared in those cases? We submit that

the State of Texas acts in violation of the principles of the *Thornhill*, *Hague* and *Schneider* cases when it acts on the assumption that a plea to employees to join in common organization for the better effectuation of civil rights is to be treated in the same category as an attempt to sell stock or insurance or any other commercial business activity.

Solicitation for membership and participation in labor organization is no mere abstract exercise in liberty. Labor union members are permitted by law to utilize their organization as a medium of expression in collective bargaining only when they have succeeded in securing the adherence of a majority of their fellow workers in an appropriate unit. National Labor Relations Act, Section 9. Thus the freedom of the individual worker to speak effectively through his organization in collective bargaining is, in a very practical and direct way, dependent upon his freedom to solicit his fellow workers to join with him. Indeed, the solicitation in which the present Appellant was engaged sought support for the union in a collective bargaining election to be conducted by the National Labor Relations Board.

The concept advanced by the State of Texas in this consideration is exactly on a par with a contention that the right to freedom of religion involves solely the right to pray in the privacy of one's home but does not include the right to organize a church, to distribute religious tracts, and otherwise to engage in the organized practice of religion where individuals' religious dictates so require.

As applied to the practice of freedom of religion this concept has been rejected by this Court in a series of cases which have made recent history. (Cf. *Murdock v. Pennsylvania*, *supra*; *Jamison v. Texas*, 318 U. S. 413; *Jones v. Opelika*, 319 U. S. 103.)

As applied to labor organizations the invalidity of this

concept is implicit in the doctrines of the *Thornhill* and *Schneider* cases. It is express in the decision in the *Hague* case which involved very directly, as we have indicated earlier, the right to hold meetings for the purpose of organizing workers into labor organizations, for the purpose of soliciting membership in these workers' organizations.

It is this broader consideration of the very nature of a labor organization which even separate and apart from the precise circumstances of the present case—the precise address delivered by this Appellant—indicates the invalidity of the Texas statute. In the present instance the application of the statute dictated a requirement of a license as a prerequisite for the simple act of delivering an address to a group of workers. That kind of a requirement in and of itself indicated a clear infringement of a perfectly obvious and simple aspect of the exercise of a civil right. But in its broader implications, the statute must also fall on the even more fundamental basis of its attempt to negate the civil right of workers to seek to solicit participation in their cause, to seek to solicit adherence to an organization which constitutes their only effective medium of expression of views in accordance with their constitutionally guaranteed civil rights.

4. *The Fact That the Texas Statute Affects Only "Paid" Organizers Does Not Diminish Its Impact on Civil Rights.*

In either the broader aspect of the case related to the basic nature of labor organizations or the narrower aspect of the case related to the specific action for which this Appellant was condemned, there is certainly no significance in the element which has repeatedly been expressed by the State, and on which the court below laid considerable emphasis, that the statute applies only to those who solicit membership in the union "for a pecuniary or financial consideration."

It may be noted in passing that the "pecuniary or financial consideration" of the Appellant in soliciting members for the Oil Workers International Union, the act for which he was found guilty of contempt, was certainly remote. He received no fee or salary from the Oil Workers International Union. The Oil Workers International Union is in turn affiliated with a national federation known as the CIO and of which Appellant is a vice president. Appellant, however, received no fee or salary or other "pecuniary or financial consideration" even from the CIO. His sole source of income comes from his position as president of another union affiliated with the CIO, namely, the United Automobile Workers of America. His solicitation of membership for the Oil Workers Union was an act of fraternal assistance rendered in the interests of trade unionism generally.

This fact, however, is not by any means the significant determinant of the relevance of the entire factor of pecuniary consideration. The receipt of a pecuniary consideration no more operates to deprive Appellant of constitutional civil rights than does the payment of income to a minister deprive the minister of religious rights nor the payment of a salary to a newspaper editor deprive the editor of the right of free press. The existence of civil rights does not depend upon whether those rights are exercised with or without compensation.

As we have indicated earlier, individual workers tied by economic necessity to their own jobs in their own plants are economically and physically limited in their ability to exercise their rights of free speech. It is one of the objects of their organization to pool their resources so that they may designate from among their ranks by democratic methods persons to act as spokesmen. That they free these spokesmen for more effective operation by drawing upon their common funds to support their spokesmen obviously cannot and does not result in a termination of the right

of free speech that is involved. It is on this same basis that the members of a congregation or church organization pool their resources for the support of a person to lead them in prayer.

The suggestion that the protection of the Constitution ends at the point where compensation begins is particularly ironic in the context of labor relations. The very purpose of using union-compensated persons as workers' spokesmen is to assure real freedom of expression and collective activity by insulating workers from employer reprisal. To deny protection because there is such compensation is to withdraw the Constitutional protection precisely at the point where it can become meaningful and effective.

The record in this case indicates that in the United Automobile Workers, the organization of which Appellant is president, as well as in all other CIO unions, solicitation of members is necessarily carried on not by any select group but by all members and officers and representatives of the organization (R. 30-32). Because the efficacy of the organization as a medium for the expression of the views of the workers who compose it is dependent upon the extent to which those workers are successful in inducing others to join with them, virtually all members are almost constantly engaged in attempts to induce their fellow employees to join in their organization. In the democratic operation of these labor unions a very large proportion of the membership are members of one or another of the various local committees, members of the plant bargaining committees, or serve as shop stewards. In the normal operation of the organization time lost from their regular jobs by members who thus perform functions on behalf of their fellow workers through the organization is compensated by payments out of the common fund. To the extent that these workers thus receive compensation for time spent on behalf of their employe organization, they are very frequently receiving com-

compensation for services which include the continued solicitation of fellow employes at their own plant or at other plants to join their organization.

Thus, as the record reveals (R. 30-32), solicitation of membership, attempts to persuade employes to join the organization may be carried on by unpaid volunteers or by persons who are in the main unpaid volunteers but receive occasional compensation for time lost from their regular jobs, by persons who are paid with relative regularity but on a part-time basis, as well as by persons who are relieved in full from their regular employment and compensated in full out of the common funds. It is the gravamen of the position of the State of Texas as upheld by the court below that activity which is a constitutional right of the volunteers loses its constitutional protection insofar as the paid personnel is concerned. It would be the logical implication of this same position that the volunteers lose their constitutional protection for the identical activity on those days of the week or in those hours of the day when they commence receiving compensation from their organization for time which they are forced to take off from their regular employment. We submit that it is perfectly clear that constitutional liberties do not thus vary with the time of the day or the day of the week or the source of compensation.

It is absurd to contend that this factor of compensation places the activities of the employes' spokesman or the minister on the one hand in the same category as the activities of a stockbroker or an insurance salesman on the other. The only similarity indicated by the fact of compensation is that both the insurance salesman and the minister have in common the characteristic that each must have sustenance and clothing and shelter in order to live. The fact of compensation does not make the activities comparable. The minister is provided with the necessary sustenance, clothing and shelter by the income afforded to

him by his congregation. The fact that his congregation affords him that income does not deprive his activity of its religious character.

This Court had precisely this issue before it in the *Murdock* case, *supra*. The contention was made in support of the constitutionality of the city ordinance requiring a license for the sale of literature that the Jehovah Witnesses sold their literature through full or part-time workers rather than through volunteers. This Court said (319 U. S. at 111):

"But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project.

"The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books.

* * *

"Freedom of speech, freedom of the press, freedom of religion, are available to all, not merely to those who can pay their own way."

Even more pointedly, in the case of *Follett v. Town of McCormick*, 64 S. Ct. 717, decided on March 27, 1944, this Court said (at 719):

"Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living. Whether needy or affluent, they avail themselves of the constitutional privilege of a 'free exercise' of their religion when they enter the pulpit to proclaim their faith."

The State of Texas can derive no constitutional support for its statute by characterizing Appellant and other labor

spokesmen as "labor organizers" and thereby seeking to place them under regulation as though their activities constituted business or commercial transactions. As this Court said in *Near v. Minnesota*, 283 U. S. 697:

"Characterizing the publication as a business and treating business as a nuisance does not permit an invasion of the constitutional immunity against restraint."

This, unfortunately, is precisely what the Texas Supreme Court attempted to do. The Court was content to declare:

"It [the statute] affects only the right of one to engage in the business as a paid organizer, and not the mere right of an individual to express his views on the merits of the union." (R. 322.)

In this and other portions of its opinion, the Texas Supreme Court apparently concluded that if the statute had been applied to persons who solicited members without pay, it would not have passed the test of constitutionality. We submit that under the decisions of this Court there is a constitutional basis for distinction between the civil rights of those who receive pay and those who do not. The full answer to the view of the Texas Supreme Court is best stated in the words quoted from the *Murdock* case, *supra*:

"Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way."

B. The Texas Statute Imposes an Unconstitutional Previous General Restraint Upon the Right of Employees and Their Spokesmen to Solicit Members for Their Organization.

The foregoing pages have been devoted to a demonstration that the activity regulated in this case is an exercise

of free speech and not merely a commercial enterprise. We turn now to an application of the standards which this Court has laid down for evaluation of the validity or invalidity of a restriction or regulation of activity which constitutes an exercise of the right to speak and disseminate views.

Clearly the standard is not, as the State has contended, the standard applied to State regulation of commercial, profit-making enterprises. Basic to this consideration is the doctrine most clearly enunciated in *West Virginia v. Barnette*, 319 U. S. 624, 639:

"In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect."

1. *The Invalidity of Previous General Restraints on Civil Rights.*

That a licensing prerequisite imposed upon the right to speak must be evaluated on the basis of the special standards of protection accorded to the exercise of free speech is equally clear. In *Lovell v. City of Griffin*, 303 U. S. 444, this Court had before it a city ordinance which prohibited

distribution of leaflets and other literature unless the distributors secured the written permission of the city authorities. This Court there concluded (at 451) :

"We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing.' And the liberty of the press became initially a right to publish 'without a license what formerly could be published only with one.' While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. See *Patterson v. Colorado*, 205 U. S. 454, 462, 27 S. Ct. 556, 51 L. Ed. 879, 10 Ann. Cas. 689; *Near v. Minnesota*, 283 U. S. 697, 713-716, 51 S. Ct. 625, 630, 75 L. Ed. 1357; *Grosjean v. American Press Company*, 297 U. S. 233, 245, 246, 56 S. Ct. 444, 447, 80 L. Ed. 660."

In these cases the question is not whether the license required by the State would or would not have been granted to the individual restrained. It is not a defense for the State to assert that the license may be acquired for the asking. This Court said in the *Thornhill* case, *supra* (310 U. S. at 97) :

"The cases when interpreted in the light of their facts indicate that the rule is not based upon any assumption that application for the license would be refused or would result in the imposition of other unlawful regulations. Rather it derives from an appreciation of the character of the evil inherent in a licensing system. The power of the licensor against which John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing' is pernicious not merely by reason of the censure of par-

ticular comments on matters of public concern. It is not the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. See *Near v. Minnesota*, 283 U. S. 697, 713. One who might have had a license merely for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it. *Lovell v. Griffin*, 303 U. S. 444; *Hague v. CIO*, 307 U. S. 496."

The *Murdock* case, too, involved a variant of the pattern of governmental attempt to impose a precondition upon the exercise of a constitutional liberty. Speaking of a license requirement which involved the payment of a license fee as a prerequisite to the exercise of the right of the Appellants in that case to distribute their religious literature, the Court said:

"A state may not impose a charge for the enjoyment of a right granted by the federal constitution."

* * *

"It is one thing to impose a tax on the income of property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering his sermon. The tax imposed by the city of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment."

2. *The Texas Statute Is Not Comparable to One Involving Mere Identification or Registration for Public Protection.*

The State of Texas has sought support for the statute in the present case in the contention that the restriction imposed under the statute is nothing more than a "registration" requirement of a type which has been upheld by the courts. In this contention the State relies upon the decision of this Court in *Cox v. New Hampshire*, 312 U. S. 569, certain *dicta* of this Court in the case of *Cantwell v. Connecti-*

cut, 310 U. S. 296, and a decision of the Circuit Court of Appeals for the First Circuit in the case of *City of Manchester v. Leiby*, 117 F. (2nd) 661, cert. denied 313 U. S. 562. An examination of the significant aspects of these decisions reveals a complete absence of support for the State's position in the present case.

Of these cases the *Cox* case is the most significant. It is the only one which involves a direct holding by this Court sustaining the validity of an ordinance establishing a precondition for the engaging in the activity claimed to be a constitutional right. The statute of the State of New Hampshire in that case required a license for parades and processions on public streets. This Court carefully noted the limitations placed by the Supreme Court of the State in its construction of the intent and import of the statute. This Court noted that the New Hampshire Supreme Court had declared that the regulation

"* * * was applicable only 'to organized formations of persons using the highways'; and that 'the defendants separately or collectively in groups not constituting a parade or procession' were 'under no contemplation of the act.'" (312 U. S. at 575.)

This Court went on to note with respect to the nature of the New Hampshire statute:

"It was with this view of the limited objective of the statute that the State court considered and defined the duty of the licensing authority and the rights of the Appellants to a license for their parade, with regard only to considerations of time, place and manner so as to conserve the public convenience." (312 U. S. at 575.)

This Court also noted that (312 U. S. at 574, 575):

"The authority of a municipality to impose regulations in order to assure the *safety and convenience of the people in the use of the public highways* has never been re-

garded as inconsistent with civil liberties, but rather as one of the means of safeguarding the good order upon which they ultimately depend. The *control of travel on the streets of cities* is the most familiar illustration of this recognition of social need. * * * As *regulation of the use of the streets for parades and processions* is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places. *Lovell v. Griffin*, 303 U. S. 444, 451, 58 S. Ct. 666, 668, 82 L. Ed. 949; *Hague v. Committee for Industrial Organization*, 307 U. S. 496, 515, 516, 59 S. Ct. 954, 963, 964, 83 L. Ed. 1423; *Schneider v. State of New Jersey*, 308 U. S. 147, 160, 60 S. Ct. 146, 150, 84 L. Ed. 155; *Cantwell v. Connecticut*, 310 U. S. 296, 306, 307, 60 S. Ct. 900, 904, 84 L. Ed. 1213." (Emphasis supplied.)

It was on the basis of these considerations that this Court concluded (312 U. S. at 576):

"If a municipality has authority to control the *use of its public streets for parades or processions*, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right." (Emphasis supplied.)

In the one case in which it has thus upheld a licensing requirement, this Court was careful to restrict its determination to a consideration of the authority of the municipality to regulate the use of the public highways in the interests of the safety of the people. And it should be noted that even within that area of traditional and necessary exercise of public authority, this Court limited the proper action of the State to control exercised in a manner

"so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorably associated with resort to public places." (312 U. S. at 574.)

That even the power over the public streets is substantially limited to the making of reasonable regulations for the control of traffic and the maintenance of order is further demonstrated by the decision of this Court in *Jamison v. Texas*, 318 U. S. 413, 415-16.

In almost identical manner and language these are also the limitations of the *Cantwell* dictum of this Court and the *Leiby* Circuit Court decision. In the *Cantwell* case the Connecticut statute involved was found unconstitutional. It was a statute which required prior approval of the Secretary of the Public Welfare Council for the solicitation of funds for a religious, charitable or philanthropic cause. The Appellant in the case had been going from door to door and on the public streets making his solicitation for funds. The dictum upon which substantial reliance has been placed by the State of Texas and by the Supreme Court of Texas in support of the Texas statute in the present case declares:

"The general regulation in the public interest of solicitation which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds is not open to any constitutional objection even though the collection be for a religious purpose." (310 U. S. at 305.)

This Court was thus discussing the regulation of the solicitation of funds. It was discussing the solicitation of funds from the public. Indeed, the Court specifically went on to explain that:

"Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for

any purpose, to establish his identity and his authority to act for the cause which he purports to represent." (310 U. S. at 306.)

By the same token, the ordinance involved in the *Leiby* case attached the identification requirement solely to the sale of literature on "streets or other public places." The Circuit Court in defining the scope of the ordinance before it very carefully delineated its limitations. The court said:

"The challenged ordinance is modest in scope. It puts no restriction upon the giving away of books, papers, magazines, etc., at any time and at any place. Persons desiring to 'sell or expose for sale' such literature on the streets or other public places are required to identify themselves. * * * (117 F (2d) at 664.)

The Texas statute in the present case is not related to the use of the public streets.

Appellant in the present case was not engaged in the use of the public streets for the purpose of his address.

The statute in its licensing requirements does not purport to have any relationship to the solicitation of funds, whether publicly or privately.

Appellant in the present case did not engage in any solicitation of funds. Indeed, under the Texas statute Appellant needed no license to engage in the solicitation of funds.

He could have asked for funds without securing a license. He was forbidden to ask workers to join a union unless he secured a license.

The statute in the present case prohibited Appellant from making his speech without a license at any time or under any circumstances.

The statute in the present case prohibited Appellant, unless he secured a license, from making his speech seeking membership for the Oil Workers International Union, in any place in the State of Texas whether on the streets or in private homes or in social gatherings or in union meetings. The crime is committed if without a license a worker is asked to join a union in conversation or by speech or by written medium, whether in a private home, in a shop or factory, in an automobile or bus while going to work, in the union hall, or in any other place where workers live, play or work.

It should thus be noted first, in a consideration of the cases upon which the State of Texas relies, that these relate to nominal restrictions necessary for the maintenance of order on the public streets. The significance of this factor, obvious from the quotations cited above from this Court's decision in *Cox v. New Hampshire*, *supra*, is reinforced by the opinion of the Court in the recent case of *Prince v. Commonwealth*, 64 S. Ct. 438, decided December 14, 1943. In upholding the power of the State to prohibit the sale of literature by children "in any street or public place," this Court declared (64 S. Ct. at 444) :

"Our ruling does not extend beyond the facts the case presents. We neither lay the foundation 'for any [that is, every] state intervention in the indoctrination and participation of children in religion' which may be done 'in the name of their health and welfare' nor give warrant for 'every limitation on their religious training and activities.' The religious training and indoctrination of children may be accomplished in many ways, some of which, as we have noted, have received constitutional protection through decisions of this Court. These and all others except the public proclaiming of religion *on the streets*, if this may be taken as either training or indoctrination of the proclaimer, remain unaffected by the decision." (Emphasis supplied.)

Even more basically, however, it should be recognized that these cases represent an application of a general underlying principle running through this Court's decisions in the realm of civil liberties. The regulation of the public streets is a well-recognized area of necessary State action in the interests of physical safety and order. Even the protection of that well-recognized and well-accepted interest of the State is limited when civil rights are involved to the extent that, as this Court stated in the *Cox* case, the control must not be exerted so as to "deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places." (312 U. S. at 574.) The more general rule of evaluation has been set forth by this Court in the case of *Schneider v. New Jersey, supra*:

"This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government of free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

"In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." (308 U. S. at 161.)

And in the making of this evaluation, in determining the effect of the challenged legislation as against the interest of the State to be protected, we have in mind once more

the basic standard enunciated in *West Virginia v. Barnette*, *supra*, which indicates that mere "rational basis" for State action while perhaps sufficient for regulation of a public utility, is not sufficient for restriction of free speech, for

"freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect." (319 U. S. at 639.)

In applying these standards to the present case it is appropriate to evaluate realistically first, the impact of the regulation on the exercise of the rights which the State seeks to regulate and, secondly, the weight of any legitimate public interest which could conceivably be served by the regulation. The first evaluation clearly reveals that in practical effect the restrictions imposed by this statute, far from constituting a mere registration or identification procedure, impose a very real interference and limitation upon the effective exercise of the civil rights of Appellant and of employees generally in the State of Texas. On the second evaluation, not only does the record fail to reveal any "clear and present danger" to interests which the State may legitimately seek to conserve, but in fact there is no conceivable public interest to which the regulation could even purportedly be addressed. We should like to direct the Court's attention briefly to the factors relating to each of these inquiries.

- (a) *This statute does not involve a mere registration or identification requirement but in practical effect severely limits and to some extent precludes the effective exercise of constitutionally protected civil rights of Texas workers.*

The suggestion that the statute involves nothing more than a nominal registration or identification provision overlooks at least two important lines of consideration,

namely, (1) the actual procedure required as a prerequisite to the securing of a license entitling one to request workers to join unions, and (2) the realities of union organization and operation and the circumstances under which, for the effective exercise of their civil rights, workers must engage in their efforts to secure additional members for their organizations.

(1) The factual operation of the licensing requirement

Under the terms of Section 5, before an individual affected by the statute, such as the Appellant in the present case, is permitted to address a fellow worker or a worker in a plant and request that he join a union it is necessary:

- (i) To secure from the union credentials.
- (ii) Prepare a written request stating his own name in full and his labor union affiliation.
- (iii) Attach a copy of his credentials to his application.
- (iv) Sign the application.
- (v) Proceed personally to the City of Austin, which is the capital of the State, in order to file his application, or send it by mail.
- (vi) If he has sent it by mail await receipt from the Secretary of State of the organizer's card which must bear notations as to his name, union affiliation, and which must carry his own signature and the signature of the Secretary of State dated and attested by his seal of office.

The foregoing, moreover, are only the steps specifically spelled out in the statute. The State of Texas has urged the departmental rulings of the Secretary of State as important in considering the requirements of the law (R. 11). As the record reveals, the Secretary of State in administration and application of the law has required that the signature on the request for the card be acknowledged by a notary public. (Plaintiff's Exhibit 7, R. 12, 46-47.) The

Secretary of State further requires that the request bear the sworn statement of the applicant that he is a citizen of the United States. If there should be any question therefore as to his citizenship, he would have to obtain the necessary proofs so as to avoid the criminal penalties involved in the making of an untrue sworn statement.

Nor does this describe fully the hurdles which must be cleared to assure the right to ask a worker to join a union. The record in this proceeding contains the "Policies of State Department" setting forth the official procedure for administration of the statute. (Defendant's Exhibit 1, R. 13, 72-74) This document declares:

"12. In the absence of mistake, fraud or misrepresentation with respect to securing same, it is considered that the Secretary of State has no discretion in the granting of an 'organizer's card,' and that the applicant will be entitled to same upon compliance with the Act. It will be required, however, that the applicant show a bona fide affiliation with an existing labor union."

The Secretary of State testified in the present proceeding that as of the time of his testimony he had already rejected 40 or 50 applications "where they failed to give all the information or failed to sign the application or failed to attach the credentials or some other such defect as that." (R. 14)

Not only must the Secretary of State determine whether an application has been properly filled out on its face, but he must also decide, and if any doubt is raised, investigate in order to determine, whether (1) "the credentials" adequately establish that the applicant has "authority to act as organizer for the labor union with which I am connected," and (2) whether the applicant is in fact a citizen of the United States, and (3) whether the applicant has been convicted of a felony and, if so, whether he has had his rights of citizenship restored "by proper authority."

On these two points it should be recalled that the total result is not merely, for example, that an alien may not solicit members for a union. If that were the provision a person certain of his own citizenship would be free to engage in the solicitation and would be subjected only to the threat of criminal prosecution if in fact he were incorrect in his assumption as to his own citizenship. The Secretary of State, however, requires that before engaging in the activity, even the citizen must satisfy the Secretary of State as to his citizenship and until he receives from the Secretary of State a signed document attesting to the Secretary of State's satisfaction on this point, even the citizen is forbidden to request a worker to join a union. (Plaintiff's Exh. 7, R. 12, 46-47, 14)

Can it with any reasonable foundation be said that all of this constitutes "merely" a nominal registration and identification system? We shall discuss in the following pages some of the realities of employe organization which render this kind of system as applied to labor organizations virtually a prohibition of solicitation in many instances. We submit at this point, however, that even on the face of the regulations, on the face of the statute and the stated policies of the Texas Department of State, the State of Texas has undertaken to impose an arbitrary series of serious restrictions on an exercise of free speech. A shop steward or local union committeeman operating as a representative of his fellow employes in the mill or plant in which he is employed and therefore compensated on a part-time or lost-time basis is forbidden to ask a worker or group of workers to join his union. He is forbidden to do so unless and until he has travelled or written to the Secretary of State at Austin and complied with all of the formalities imposed by the statute and the Secretary of State. He is forbidden to do this unless and until he has received from the Secretary of State a signed document attesting to his

right to ask his fellow workers to join his union. During all this time and until all of these prerequisites have been complied with he is silenced by the threat of jail and injunction from uttering the forbidden words: "Will you join my union?" We respectfully submit that for such restrictions the State of Texas can find little support in cases which authorize a requirement of registration of name and address with a nearby city clerk in order to use the public streets for a parade.

- (2) *The restrictions imposed by this statute in the light of the realities of labor organization constitute unreasonable and serious limitations on free speech.*

In the foregoing pages we have pointed out the broad scope of the statute and the delays involved in attempting to comply with it. Those considerations demonstrate the conditions established by the statute as prerequisites to the exercise of the right of speech in and of themselves constitute such serious interference as to operate as virtual prohibitions on the right of free speech.

This conclusion, however, is even more sharply true under the specific circumstances which surround the operation of labor organizations, which it will be recalled are the organizations upon which these limitations are imposed.

In earlier pages of this brief we have described to the jury the fundamental concept of labor organizations and of the process of securing adherents. The process necessarily starts with a group of workers in a plant who are as yet not members of the organization. It is a process which historically has met with the opposition of employers. The employer's course has on his side the unique power inherent in his control over the worker's job.

In these early and struggling stages of organization within a plant the solicitation of membership is carried on

worker to worker, in lunch time discussions and in social gatherings.

The few workers who at the start have joined in the movement arrange their organizational relationships and plans at small gatherings in each other's homes or elsewhere. They may designate some from among their meager ranks with specific tasks of leading in the discussions and in the movement to bring others into their ranks. At this level in their organizational activities they may commence their joint contributions and pooling of some of their funds to compensate those assigned specific tasks in the spreading of their views.

(i) The Texas Statute Destroys Organizational Rights by Exposure of Leaders.

In all of these early stages and particularly in the face of employer hostility, the possibility of having the value of union organization considered by the employes on its merits and in free discussion is dependent in large measure on the degree to which the discussion can be carried on without the knowledge of the employer and without fear of possible employer retaliation. Exposure of the names of the leading figures and indeed exposure even of the fact that union organization is being carried on or that a struggling organization exists among the workers is in many instances equivalent to a denial of the right to secure a free discussion and unhampered consideration of the merits of the issues.

One of the most familiar forms of interference with self-organization is the requirement that an employe disclose his affiliation with and activities in a labor organization. *Heinz v. NLRB*, 311 U. S. 514, 518; *NLRB v. Cities Service*, 129 F. (2d) 933, 934 (C. C. A. 2); *NLRB v. Botany*

Worsted Mills, 106 F. (2d) 263, 267-268 (C. C. A. 3); *NLRB v. Clarksburg Publishing Co.*, 120 F. (2d) 976, 979 (C. C. A. 4); *NLRB v. Alco Feed Mills*, 133 F. (2d) 419, 421 (C. C. A. 5); *NLRB v. W. A. Jones Foundry & Machine Co.*, 123 F. (2d) 552, 554 (C. C. A. 7); *NLRB v. Locomotive Finished Material Co.*, 133 F. (2d) 233, 234 (C. C. A. 8). Disclosure not only exposes the organizer to employer reprisal where the organizer is employed in a plant but identifies his associates as union adherents and subjects them to the fear of anti-union discrimination. Moreover, when the organizer is not employed in the plant, the requirement that he expose his identity leaves him a prey to beatings and bloodshed. *Matter of Goodyear Tire & Rubber Co.*, 21 NLRB 306, enforced in part in 129 F. (2d) 661 (C. C. A. 5); *Matter of Ford Motors* (Dallas), 26 NLRB 322, enforced in this respect in 119 F. (2d) 326 (C. C. A. 5); *NLRB v. Elkland Leather Co.*, 114 F. (2d) 221, 223 (C. C. A. 3), cert. den. 311 U. S. 705; *NLRB v. Newberry Lumber & Chemical Co.*, 123 F. (2d) 831, 835 (C. C. A. 6); *NLRB v. Sunshin. Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9) cert. den. 312 U. S. 687; *NLRB v. Weirton Steel Co.*, 135 F. (2d) 494, 495-496 (C. C. A. 3); *NLRB v. Tennessee Products Co.*, 134 F. (2d) 486 (C. C. A. 6); *NLRB v. New Era Die Co.*, 118 F. (2d) 500, 504 (C. C. A. 3); *Reliance Mfg. Co. v. NLRB*, 125 F. (2d) 311, 319 (C. C. A. 7). See generally VIOLATIONS OF FREE SPEECH AND RIGHTS OF LABOR, Reports of Senate Committee on Education and Labor pursuant to S. Res. 266 (74th Cong.) extended by S. Res. 98 (78th Cong.) (e.g. Report No. 46, 75th Cong. 2d Sess.; Report No. 6, 76th Cong. 1st Sess.; Report No. 1150, 77th Cong. 2d Sess.; Report No. 398, 78th Cong. 1st Sess.).

The Texas statute strikes at the heart of the exercise of the rights of self-organization because it offers anti-union

employers a ready target against which to instigate hostile pressures. Unions are threatened not when they have achieved growth and collective support but at the stage of solicitation, the "critical formative stage." *Kansas City Power & Light Co. v. NLRB*, 111 F. (2d) 340 (C. C. A. 8). Nor is the grave threat to collective activities implicit in the statute posited upon idle speculation. The statute is the work of a State where employers have been unusually aggressive in their attacks upon labor organizations. *Ford* case, *supra*; *American Smelting & Refining Co. v. NLRB*, 128 F. (2d) 345 (C. C. A. 5); *El Paso Electric Co. v. NLRB*, 119 F. (2d) 581 (C. C. A. 5); *NLRB v. Ed. Friedrich, Inc.*, 116 F. (2d) 888 (C. C. A. 5); *NLRB v. Hawk & Buck Co.*, 120 F. (2d) 903 (C. C. A. 5); *Mexia Textile Mills v. NLRB*, 110 F. (2d) 565 (C. C. A. 5), enforcing 11 NLRB 1167; *NLRB v. Texas Mining & Smelting Co.*, 117 F. (2d) 86 (C. C. A. 5); *NLRB v. West Texas Utilities*, 119 F. (2d) 683 (C. C. A. 5); *Texas Co. v. NLRB* 112 F. (2d) 744 (C. C. A. 5); *NLRB v. Tex-O-Kan Flour Mills*, 122 F. (2d) 433 (C. C. A. 5); *NLRB v. Bowen Motor Coaches*, 124 F. (2d) 151 (C. C. A. 5); *NLRB v. Dixie Motor Coach Co.*, 128 F. (2d) 201 (C. C. A. 5); *Southport Petroleum Co. v. NLRB* 315 U. S. 100, affirming 117 F. (2d) 90 (C. C. A. 5); *NLRB v. East Texas Motor Freight Lines*, decided February 3, 1944 (C. C. A. 5).

The statute by requiring this disclosure forces the constitutional right of soliciting membership in a labor organization into a forum fatal to its effective exercise and equally fatal therefore to the effective exercise of the right of free speech which workers seek to exercise through their organization. There is, however, still another aspect of the process of organization and the operation of employe organizations in the context of which this statute operates as a very serious and damaging restraint on civil rights.

(ii) The Texas Statute Destroys Organizational Rights by Imposing Unreasonable Delays.

The process by which employes formulate their views and channelize them into the organized form which alone can make those views heard is necessarily dynamic. It is subject to the stresses and impulses and developments among large groups of people who are almost constantly in daily and hourly contact with each other in their employment and in their residence. A worker seeking the membership of a fellow employe in his organization does not normally arrange an advance appointment to meet for discussion in either of their respective "offices." The solicitation occurs in lunch time gatherings, in chance contacts on the streets or in the public conveyances or on visits to homes. As in any dynamic process, speed and strategic timing in an appeal are frequently of the essence. The organizational impulse quickens and fades in a plant in response to a host of variables in the employment situation. Unless a leader in the thought of the workers is available to register and channelize their choice and direction of thought at a strategic moment when the ideas of a substantial number are tending to crystallize, the right to solicit and the right to join labor organizations may become mere abstractions. (*Cf. Medo Photo Supply Co. v. NLRB*, decided by this Court April 10, 1944).

It is for this reason that it is normal practice in the annals of labor organization for a struggling group of employes in one establishment to call upon fellow union members in a neighboring plant to render aid, on a particular day, in the distribution of leaflets at the relatively unorganized plant, urging and soliciting membership in the union, or in visits to and discussions with the workers in the unorganized establishment. Workers undertaking this task of fraternal assistance may be and frequently are compensated out of union funds for their assistance. As

members of the union they have at all times engaged in solicitation of new members and in the expounding of the union's program and viewpoint. Overnight they are converted for a single day into paid union organizers within the mechanical concept of the Texas statute. Under the terms of the statute, however, they are denied the power to exercise their right of solicitation at the very moment when that right can be most effectively exercised. Under the terms of the statute they are required either to travel the distance to Austin to seek their license from the Secretary of State and to subject their "credentials" to his examination, or in the alternative they are required to engage in days of correspondence before they may proceed to their neighboring establishment to request the workers in that establishment to join a union.

Thus even apart from all other considerations the injection of the element of delay into the right to induce workers to join an organization means the injection of an element which can be fatal to the meaningful and effective exercise of that right.

In the *Cox* case, *supra*, this Court declared that even where so clear a State interest as regulation of the use of streets for parades and processions is involved "the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought." (312 U. S. at 574.) In the dictum from the *Cantwell* case, *supra*, so frequently referred to by the State of Texas in the lower courts in this proceeding, this Court declared that even for the protection of so clear a public interest as is involved in the public solicitation of funds it is important to ascertain that the regulation "does not unreasonably obstruct or delay the collection of funds." 310 U. S. at 305.)

It is perfectly clear that these cases can give no comfort to the State of Texas. The statute in the present case unwarrantedly abridges the civil right and the opportunity for the exercise of the civil right in a manner which amounts in many instances to virtual denial. The statute unreasonably obstructs and delays the exercise of the right. It changes the forum of discussion of union organization in a manner calculated to make consideration of the appeal for union membership less free. It imposes restrictive delays upon the free discussion of ideas in a realm in which timing in the crystallization of the thoughts of large numbers of individuals is of the essence of the right to discussion among those individuals.

- (b) *Separate and apart from the prohibitive effects of the Texas statute on the exercise of civil rights, it cannot be supported because on the other side of the balance there is not merely no "clear and present danger" to any interest which the State might legitimately seek to protect, but there is literally no reasonable relationship between this statute and any conceivable evil which the State of Texas might seek to eliminate.*

We turn now to the other side of the balance involved in the test described by this Court in the *Schneider* case, *supra*. It will be recalled that this Court there said that where legislative abridgement of fundamental principles of personal rights embodied in the First Amendment is involved "the Court should be astute to examine the effect of the challenged legislation." (308 U. S. at 161.) An astute examination of the *effect* of this legislation is what we have urged in the foregoing pages. With respect to the other side of the balance, this Court continued in the *Schneider* case to point out that

"Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify

such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." (308 U. S. at 161.)

As elaborated further in *West Virginia v. Barnette*:

"* * * Freedoms of speech and of press, of assembly and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect." (319 U. S. at 639.)

And in further elaboration of the scope and meaning of the "clear and present danger" doctrine, this Court has explained (*Bridges v. California*, 314 U. S. 252, 262, 263):

"* * * the 'clear and present danger' language of the Schenk case has afforded practical guidance in a great variety of cases in which the scope of constitutional protections of freedom of expression was in issue. It has been utilized by either a majority or minority of this Court in passing upon the constitutionality of convictions under espionage acts, *Schenk v. United States*, *supra*; *Abrams v. United States*, 250 U. S. 616; under a criminal syndicalism act, *Whitney v. California*, *supra*; under an anti-insurrection act, *Herndon v. Lowry*, *supra*; and for breach of the peace at common law, *Cantwell v. Connecticut*, *supra*. And very recently we have also suggested that 'clear and present danger' is an appropriate guide in determining the constitutionality of restrictions upon expression where the substantive evil sought to be prevented by the restriction is 'destruction of life or property, or invasion of the right of privacy.' *Thornhill v. Alabama*, 310 U. S. 88, 105.

"Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be 'substantial' * * * it must be 'serious.' And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into 'substantive evils of sufficient weight to

warrant the curtailment of liberty of expression. *Schneider v. State*, 308 U. S. 147, 161."

What then is the legitimate interest of the State purportedly served by this Texas abridgement of free speech? What is the "grave and immediate danger" which the State of Texas can purport to face in order to come within the doctrine of *West Virginia v. Barnette*? Indeed it might be asked, "Even if this Court in the *Schneider* case had not announced the far broader scope of protection to which Appellant is entitled, is there even a 'public inconvenience or annoyance' to which this legislation is addressed?"

The Supreme Court of the State of Texas found in this connection only a possible protection against "fraud." The court below suggested that

"It is important to the laborer that he be able to know that the representations of the purported organizer who approaches him with a request that he join the union and pay his dues in order to be able to work on a particular job are the representations of an accredited agent of the union.* * *" (R. 323.) (Emphasis supplied.)

The Texas court further suggested the importance

"that the purported representative be identified in order that pretenders under the guise of authority from the union may not misrepresent the organization nor collect or squander funds intended for its use." (R. 323.) (Emphasis supplied.)

In both these quotations the Court refers to the payment of dues and the collection of funds. In so doing the simple fact is that the Texas Supreme Court was discussing a purely hypothetical statute in no way related to the statute involved in the present case.

The Texas statute has nothing to do with the payment of dues or the collection of funds.

A license is required solely for the solicitation of members. Appellant or anyone else may collect dues from old or new members without the necessity for a license.

Indeed, the Texas Secretary of State was somewhat concerned with the situation presented where the solicitation of membership constitutes only a part of the duties or activities of an individual. The conclusion, embodied in the official regulations issued by the Secretary, is that a "business agent, secretary or other employe of a union" may conduct any activity whatsoever on behalf of a union, without a license, so long as he "wholly abstains from the solicitation of memberships." (Def. Exh. 1, Secs. 9, 10, R. 74, 12-13).

It is precisely and solely the act of expounding the union's desirability and seeking support for its program through appeals for membership that is subjected to the licensing requirement. It is not at all the collection of funds that is subjected to any licensing requirement. Indeed, the whole purpose and end of the solicitation of membership has no necessary or immediate relationship to the collection of dues. In seeking the support of their fellow workers for their organization, the members of a labor organization merely seek the formation of a collective bargaining entity authorized to express the voice of the worker in the industrial forum. It is fairly common practice during the period of organization for the members of a union to attach no dues obligation to membership until a collective bargaining relationship has been established. And, of course, the right of a labor organization to represent its members depends solely on authorization and not on dues payments. *NLRB v. Bradford Dyeing Association*, 310 U. S. 318, 338-9; *NLRB v. National Motor Bearing Co.*, 105 F (2d) 652 (C.C.A. 9); *NLRB v. Chicago Apparatus Co.*, 116 F (2d) 753, 756 (C.C.A. 7); *NLRB v. Somerset Shoe Co.*, 111 F (2d) 681, 687 (C.C.A.

1); *Lebanon Steel Foundry v. NLRB*, 130 F (2d) 404 (App. D. C.) *certiorari* denied 317 U. S. 659.

Certainly there can be no serious suggestion that the "fraud" which is feared lies in the possibility of an appeal for membership in a union made by a person who actually does not speak on behalf of the union. Appeals in favor of union membership are regularly made by persons who do not speak on behalf of any union, just as appeals against union membership are made by persons who do not speak directly on behalf of any employer. From all the 55 volumes of decisions of the National Labor Relations Board, from its inception to the present date, despite the astuteness displayed by thousands of employers in discovering reasons why membership of employes in certain organizations should be discounted as true indications of the representation desires of those employes, the State of Texas has not been able to indicate a single instance in which an employe's membership in or adherence to a union was challenged because the man who urged him to join was not a "duly accredited representative" of the organization which the worker joined.

It is difficult to conceive the "fraud" which could be feared in the act of urging the desirability of membership in a union. In a democratic society the determining factor in the employe's final choice should presumably be the persuasiveness of the arguments advanced, the merits of the organization, rather than the specific organizational affiliation or non-affiliation of the speaker.

Moreover, if there is fear that persons may purport to represent a union but actually not be its representatives, that danger would presumably stem precisely from those persons who are *not* paid by the union. It is not, we assume, suggested that the union would *pay* a man *not* to be its representative. But the statute requires a license pre-

cisely and solely from those who *are* paid by the union. Those who are not paid by the union or who have no relationship to it (and therefore presumably might commit the "fraud" of claiming such a relationship) are precisely the ones who are perfectly free to solicit membership for that union without a license at any time and at any place.

We can only assert in all seriousness that argument on the question of the public interest to which a statute of this type can claim to be addressed can involve counsel only in a hopeless search for a will-o'-the-wisp. The simple fact is that a license from the Secretary of State in Austin is required before the magic words: "Will you join my union?" may be uttered, if the person who dares to make the request happens to be compensated by his fellow union members for services performed on their behalf. No funds are involved. No public streets are involved. No parades are involved. No disturbances are involved. Nothing other than the expression of a forbidden idea.

"Freedoms of speech and of press, of assembly and of worship," this Court has said "may not be infringed on such slender grounds" as a mere "rational basis" for the infringement (*West Virginia v. Barnette*), nor on the basis of "mere legislative preferences or beliefs respecting matters of public convenience (*Schneider v. New Jersey*). In the present case it is difficult to discover even rational basis or public convenience. Indeed it is difficult to conceive in support of the present statute even the shadow of a possibility of a speculation.

C. Conclusion as to Point I

The Texas statute can be upheld only by analysis which fails to pierce superficial analogies and strike to fundamental concepts and principles.

There is an inveigling symmetry in the suggestion that since plumbers, brokers and sellers of insurance may be subjected to licensing requirements, so may employees' spokesmen who are compensated by their fellow union members for their services. But there is an equal symmetry in the contention that since taxes are imposed on distributors of commercial literature, so may taxes be imposed on the dissemination of ideas or on the distribution of religious literature. This Court has rejected that symmetry in the light of far more fundamental principles.

There is an inveigling but specious quality in the suggestion that since the use of the public streets for parades may be regulated and since public solicitors of funds may be asked to identify themselves, so may a person seeking to persuade others of the desirability of membership in a labor organization be required to secure a license to permit him to engage in that activity. But the Texas statute relates neither to the public streets nor to the solicitation of funds. It offers no suggestion as to why the dissemination of one carefully isolated idea, the idea of the desirability of union membership, should above all others be singled out as the one idea whose dissemination requires the prior identification and registration of the speaker. This same specious analogy further requires the astute examination which this Court has enjoined upon itself with respect to the realistic effect of challenged legislation in this all-important realm of free discussion of ideas. The facts within the judicial experience of this Court and within the confines of this record demonstrate that the practical impact of this statute is to impair and severely limit the effective exercise by workers of their civil rights through the organizations which they have built and are attempting to build as the only effective medium available to them for the presentation of their point of view in the form of public discussion.

The civil rights of the individual men and women who comprise this nation are not intended to be philosophic abstractions. They are intended to be practical realities. But they can be practical realities only to the extent that freedom is granted to make them so. They must not be rights limited in effective application to those individuals whose personal wealth or power makes possible the effective exercise of free speech. From the Minute Men organizations and Councils of our colonial forebears, on through our history, the concept of assembly and organization, as a means of putting meaning and effectiveness into the rights of men whose individual voices are not sufficiently powerful to be heard alone, has been a fundamental of our democratic structure. The very declaration in our First Amendment of the right of assembly is coupled with the right of joint action flowing out of that assembly in the form of petition to the government. In the present case Appellant made a speech in which he invited oil workers to join their fellow employes in an organization which could best speak for them all. May the State of Texas constitutionally require that he secure a license to be permitted to make that speech? In the present case Appellant was designated and requested, by those oil workers who had already joined in organization, to be their spokesman in requesting and persuading other oil workers to join in the group. May those oil workers, on whose behalf Appellant made the speech, be subjected to the requirement that any spokesman they select secure a license before he may make a speech calculated to strengthen and support their common views?

These are the questions posed by this proceeding. We respectfully submit that they require a declaration by this Court that the Texas statute is unconstitutional.

II.

The Statute Constitutes Class Legislation, Is Discriminatory and Deprives Appellant of the Equal Protection of the Laws as Guaranteed by the 14th Amendment of the Federal Constitution.

The licensing provisions of the statute embody an unconstitutional denial of equal protection of the laws. The denial consists of (1) the arbitrary and unreasonable discrimination against labor organizations and (2) arbitrary and unreasonable discrimination against non-citizens.

A. The Statute Makes an Arbitrary and Unreasonable Discrimination Against Labor Organizations.

Under the statute only persons who solicit membership for labor unions are required to obtain licenses.

We shall not burden the Court with citation or quotation of the general rules governing the degree of equal treatment required by the equal protection clause of the 14th Amendment. There is, of course, no dispute concerning the power of the State to pass laws which make appropriate classifications based on reasonable and relevant differences. There is equally no doubt that in making such classifications, imposing limitations and prohibitions upon one group which are not imposed upon other groups the State may act on the basis of a reasonable relationship to the object sought and not on the basis of any arbitrary and unreasonable classifications. *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 450; *Frost v. Corporation Commission*, 278 U. S. 515; *Hartford Co. v. Harrison*, 301 U. S. 459; *Bethlehem Motors Co. v. Flynt*, 256 U. S. 421.

The testimony discloses that no other Texas statute requires licenses for persons soliciting memberships in organizations other than those engaged in business

commercial activities. Employer associations, fraternal organizations and churches may solicit members for their organizations through paid representatives without first obtaining licenses. Only labor unions are subject to the regulations and prohibitions of the Statute.

There is a striking parallel in this situation with the circumstances involved in the case of *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 450. The Illinois statute there involved outlawed certain types of trusts and combinations. The provisions of the act, however, were expressly stated not to be applicable to "agricultural products or livestock while in the hands of the producer or raiser."

After outlining the principles governing the equal protection clause, the Court declared (at 560):

"These principles applied to the case before us condemn the statute of Illinois. We have seen that under the statute all except producers of agricultural commodities and raisers of livestock, who combine their capital, skill or acts for any of the purposes named in the act, may be punished as criminals while agriculturists and livestock raisers in respect of their products or livestock in hand, are exempted from the operation of the statute and may combine and do that which, if done by others, would be a crime against the state. The statute so provides notwithstanding persons engaged in trade or in the sale of merchandise and commodities, within the limits of a state, and agriculturists and raisers of livestock, are all in the same general class, that is, they are all alike engaged in domestic trade, which is, of right, open to all, subject to such regulations, applicable alike to all in like conditions, as the state may legally prescribe."

After further analyzing the nature of the distinction and the justification advanced for the distinction, the Court concluded as follows:

"We conclude this part of the discussion by saying that to declare that some of the class engaged in domestic

trade or commerce shall be criminals if they violate the regulations prescribed by the state for the purpose of protecting the public against illegal combinations formed to destroy competition and to control prices, and that others of the same class shall not be bound to regard those regulations, but may combine their capital skill or acts to destroy competition and to control prices for their special benefit, is so manifestly a denial of the equal protection of the laws that further or extended argument to establish that position would seem to be unnecessary."

It is not enough in the present case to point to the fact simply that one group involves employers while the other group involves employes. Any attempt to rely upon such difference would constitute a clear attempt to justify class legislation. As the Supreme Court, quoting long-established authority, said in *Frost v. Corporation Commission*, 278 U. S. 515, at 522-523:

"* * * Mere difference is not enough: the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act with respect to which the classification is proposed, and can never be made arbitrarily and without any such basis', *Gulf Colorado and Santa Fe Railway v. Ellis*, 165 U. S. 150, 155. *Louisville Gas Company v. Coleman*. * * *"

The Court in the *Frost* case had before it a statute which required that some applicants for a license to operate a cotton gin show public necessity for their grant of their application while others were relieved from the necessity of making such a showing. Although there were some differences advanced in support of this distinction, the Court after analysis of the facts, concluded:

"Stripped of immaterial distinctions and reduced to its ultimate effect the proviso as here construed and applied baldly creates one rule for a natural person and a different and contrary rule for an artificial person, notwithstanding the fact that both are doing the same business with the

general public, and to the same end, namely that of reaping profits, that is to say it produces a classification which subjects one to the burden of showing a public necessity for his business from which it relieves the other, and is essentially arbitrary, because based upon no real or substantial differences having reasonable relation to the subject dealt with by the legislation. *Power Company v. Saunders*, 274 U. S. 490, 493; *Louisville Gas Company v. Coleman*, *supra*, p. 39; *Quaker City Cab Company v. Pennsylvania*, *supra*, p. 402."

In determining the validity of statutes restricting civil rights this Court has emphasized that such statute must be "general" in their application. In *Cantwell v. Connecticut*, *supra*, the Court stated that a "general regulation in the public interest, of solicitation . . . is not open to any constitutional objection." (310 U. S. at 305.)

The basis for requiring that a law which abridges civil rights be "general" in its application is readily apparent. The courts will not lightly permit restriction of civil rights (*Thornhill v. Alabama*, *supra*). A statute which abridges such rights will not be sustained by any presumption of validity (*Prince v. Commonwealth*, *supra*). To permit freedom of speech to be abridged by a law directed specifically at the exercise of such freedom by one group would open the door to oppression.

If labor unions can properly be singled out for regulation by restricting the speech of their members, then similar restrictions can be placed upon other groups and sections of the community by the current majority. We doubt whether this Court would have upheld the validity of the statute in the case of *Cox v. New Hampshire*, *supra*, if it had provided a licensing requirement only for religious groups, or the statute in *Prince v. Commonwealth*, *supra*, if it had prohibited children from selling only religious literature on the streets.

B. *The Statute Makes an Arbitrary and Unreasonable Discrimination Against Non-Citizens.*

We have already pointed out that the licensing provision of the statute constitutes a curtailment of the right of free speech of labor representatives. We have pointed out that the State is without power to condition the right of Americans to solicit a worker to join a union.

With respect to non-citizens, however, the statute goes even further. With respect to non-citizens there is a complete prohibition since the license may be issued only to persons who are citizens of the United States.

As to non-citizens, therefore, the denial of constitutional rights is even clearer. It is clearer as a matter of due process because the question is not merely whether the State may attempt to license these activities but whether the State may attempt an outright prohibition.

The denial of the constitutional rights of non-citizens is, however, clear on another foundation, namely, the guarantee under the 14th Amendment of equal protection of the laws. No justification has been advanced, no justification can be advanced in the legislative history or otherwise, for the discrimination against non-citizens reflected in this provision.

Although Appellant is an American citizen and, if he had complied with the statutory prerequisites, could have obtained the license provided by the statute, he may nevertheless in this proceeding challenge the constitutionality of the law on the ground that it denies equal protection of the laws to non-citizens.

"One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it." *Thornhill v. Alabama, supra* (310 U. S. at 97).

If that portion of the statute which denies equal protection of law to non-citizens is unconstitutional, then the entire licensing provision must fall. Otherwise the Court would have to rewrite the law for the legislature by including non-citizens in the licensing provision where the legislature has seen fit to exclude them.

It is a matter of clear and accepted law that distinctions between aliens and citizens based on no reasonable foundation fall precisely under the heading of discriminations forbidden by the equal protection clause of the 14th Amendment.

In Cooley on Constitutional Limitations, 8th Ed., the law on this issue is summarized as follows :

"But a denial of a license to aliens to engage in a lawful occupation is a denial of the equal protection of the law in violation of the Federal Constitution." (at p. 1335).

"It is not competent therefore to forbid any person or class of persons whether citizens or resident aliens, offering their services in lawful business, or to subject others to penalties for employing them" (at p. 1341).

The case of *Truax v. Raich*, 239 U. S. 33, is the leading and famous case on this subject and is completely decisive of the point involved here. We respectfully submit that this aspect alone of the licensing requirement is sufficient to render it invalid.

CONCLUSION

The Texas statute imposes an unwarranted and unreasonable restraint amounting to an unconstitutional previous general restraint upon the exercise of civil rights guaranteed by the First and Fourteenth Amendments of the United States Constitution. It is particularly important in the present period in national and world history

that the exercise of those rights be jealously safeguarded and that interference with those rights be denounced. We respectfully submit that the Texas statute on its face and as applied to the Appellant is unconstitutional.

Respectfully submitted,

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1944

No. 14

R. J. THOMAS, *Appellant*,

vs.

H. W. COLLINS, *Sheriff of Travis County, Texas*

Appeal From the Supreme Court of the State of Texas

BRIEF FOR APPELLANT ON REARGUMENT

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1944

No. 14

R. J. THOMAS, *Appellant*,

vs.

H. W. COLLINS, *Sheriff of Travis County, Texas*

Appeal From the Supreme Court of the State of Texas

BRIEF FOR APPELLANT ON REARGUMENT

OPINIONS BELOW

The opinion of the Supreme Court of the State of Texas (R. 318-327) is reported at 141 Tex. 591, 174 S. W. (2d) 858. No written opinion was issued by the State District Court; its order adjudging Appellant in contempt appears in the Record at R. 308-309.

JURISDICTION

The jurisdiction of this Court is invoked under Sections 344 (a) and 861 (a) of the Judicial Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are set forth in our Brief in No. 569, October Term, 1943, pp. 2-5.

STATEMENT OF THE CASE

Appellant R. J. Thomas, president of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, one of the vice-presidents of the Congress of Industrial Organizations, was invited by the Oil Workers International Union, Local 1002, C.I.O., to address a mass meeting to be held on September 23, 1943, in the City of Pelly, Texas, for the purpose of organizing the employes of the Humble Oil Company (R. 5 22-23, 33, 279). On September 22, 1943, on complaint of the Attorney General in the 53rd District Court in Austin, Travis County, a distance of 167 miles from where Appellant was staying at Houston, a temporary restraining order was issued by that court, *ex parte*, to restrain Appellant from soliciting members in the Oil Workers International Union or any other labor organization affiliated with the C.I.O. without first obtaining an organizer's card "as required by law" (R. 291-295, 315-317). The order was served on Appellant at Houston, on September 23, 1943, approximately five hours prior to the meeting (R. 35). At the meeting, Appellant, without having applied for or obtained an organizer's card (R. 10, 35-37), delivered a speech in which he discussed the advantages of union membership and solicited the audience at large and one employe, Pat O'Sullivan, by name to join the Oil Workers International Union (R. 4-5, 41, 279-290).

At the close of the meeting, Appellant as well as two other speakers were arrested for soliciting members to join the Oil Workers International Union without first obtain-

ing a license as required by the Texas statute (R. 42). After further proceedings¹ the district judge found Appellant guilty of contempt of court for violation of the restraining order and rejected Appellant's contention that the Texas statute was unconstitutional (R. 299-302, 308-309).

Appellant, having been remanded to the custody of the Sheriff of Travis County, Texas, filed a petition for writ of habeas corpus in the Supreme Court of Texas, renewing his contention that the statute was unconstitutional (R. 312-314). On October 20, 1943, the Supreme Court of the State of Texas orally denied a Motion of the State to dismiss the application for the writ, grounded upon the contention that Appellant was without standing to attack the statute because he had violated the restraining order, and on October 27, 1943, the court entered its opinion and judgment, sustaining the constitutionality of the statute, denying Appellant's petition for a writ of habeas corpus and remanding Appellant to the custody of the Sheriff of Travis County (R. 318-326). On November 24, 1943, the court below denied Appellant's motion for rehearing (R. 327-366).

QUESTIONS PRESENTED

After hearing argument of this case in the October Term, 1943, this Court restored this case to the docket and assigned it for reargument this Term. Counsel were requested to discuss in their briefs the following questions:

- "1. Does the Texas Act by judicial or administrative construction require a registration or license before making the speech made by Thomas—if it had omitted the O'Sullivan solicitation?
- "2. Did the injunction forbid the speech (apart from O'Sullivan's solicitation) and is the order of contempt based in whole or in part on such speech? If

¹ Set forth in full in our Brief in No. 569, pp. 6-7.

not, is the speech used as an aggravation⁴ of the offense? If neither, what is the purpose and effect of its recital in the papers and orders in this proceeding?

- "3. Assuming the speech to be immune and assuming the words addressed to O'Sullivan to be a violation of a valid prohibition of solicitation, what is the effect on its constitutional validity of including both in one injunction?
- "4. Assuming the injunction invalid as applied to the speech, what was the duty of Thomas in respect to obedience so long as it was not set aside?
- "5. Is the application of Section 5 consistent with the provisions of the National Labor Relations Act?
- "6. Assuming that petitioner had a constitutional right to make a general argument and solicitation to the entire assembly of workers, should the State punish him in a single penalty because he picked out one member of the assembly and addressed a solicitation to him by name?"

Before discussing these questions, we discuss the nature of the distinction between the speech and the O'Sullivan solicitation.

I. A CONSTITUTIONAL DISTINCTION BETWEEN APPELLANT'S SPEECH AND HIS SOLICITATION OF O'SULLIVAN MAY NOT BE VALIDLY MADE.

The questions which the Court has requested Appellant to discuss seem, with two exceptions,⁵ to invite exploration of a distinction between Appellant's speech to and solici-

⁴ Questions No. 4 and 5. The latter question deals with the relationship of the challenged legislation to the National Labor Relations Act. We do not discuss this question here since the Government, in response to the invitation of this Court, is filing a brief *amicus curiae* dealing exclusively with this problem.

tation of his audience at large and his solicitation of O'Sullivan. We do not believe that such a distinction may be validly drawn, constitutionally or otherwise. The nature of the organizer's work and of the organizational process makes it clear that such a distinction is not a meaningful one in a consideration of the extent to which his activities enjoy constitutional protection.

A. *The Organizing Process**

The conventional pattern of organizing a plant is shaped by two basic considerations. First, the value of a union must be brought home to an ever-widening circle of employees through intensive discussion and proselytizing. Second, this process must be set in motion without invoking hostile countermeasures and must mature rapidly enough to become immune to such countermeasures. The organizer must not only promote acceptance of the union but, if he is to succeed, must do so discreetly and under conditions often difficult and hazardous.

After obtaining a list of prospects from those in the plant already sympathetic with the union, the organizer visits such prospects in their homes in the evening. To each of

*The description of the organizing process which appears in the text does not, of course, exhaust the various methods used in organizing employees. However, we believe it to be an accurate account of a common pattern. It is based upon the following sources: *Handbook of Trade Union Methods* (New York, 1937), pp. 5-7; Vorse, *Labor's New Millions* (New York, 1938), pp. 138-139; Hardman, ed., *American Labor Dynamics* (New York, 1928), pp. 114-115; Levinson, *Labor on the March* (New York, 1938), pp. 189, 241-242, 251; Walsh, *CIO—Industrial Unionism in Action* (New York, 1937), pp. 69-70; Weyforth, *Organizability of Labor* (Baltimore, 1917), pp. 16-17, 27-29; Brooks, *When Labor Organizes* (New Haven, 1938), pp. 1-6; *Report of R. J. Thomas*, "Automobile Unionism, 1940-1941," (Buffalo, 1941), p. 9; Pope, *Millhands and Preachers* (New Haven, 1942), pp. 239-241; Macdonald, *Labor Problems and the American Scene* (New York, 1938), pp. 476-477; Fitch, *The Causes of Industrial Unrest* (New York, 1924), p. 177; Seidman, *The Needle Trades* (New York, 1942), p. 186. For examples of the manner in which the organizing process described in the text operates in practice, see *Matter of Donnelly Garment Co.*, 53 N.L.R.B. 241, 245; *Matter of Goodyear Tire & Rubber Co.*, 21 N.L.R.B. 306, 315-362, enforced in this respect in 129 F. (2d) 450 (C.C.A. 5); *Matter of Mexia Textile Mills*, 11 N.L.R.B. 1167, enforced in 110 F. (2d) 565 (C.C.A. 5); *Matter of Aguilines, Inc.*, 2 N.L.R.B. 1, enforced in 87 F. (2d) 146 (C.C.A. 5); *Matter of Republic Steel Corp.*, 9 N.L.R.B. 219, 240, enforced in 107 F. (2d) 472 (C.C.A. 3); *Matter of Alma Mills*, 24 N.L.R.B. 1, 9-10.

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these workers individually he tells the story of the union, describes conditions in the industry as a whole, compares the wage scale at the plant which he is seeking to organize with those in plants already organized. He answers questions as to the purposes and methods of the union, assures those who fear employer reprisal that they will be protected, and seeks to refute objections to the organization. Upon making it as clear as possible to each prospect that collective bargaining is more effective than individual bargaining, he seeks to have his prospect sign a pledge card or membership application.

The organizer then arranges to meet with those who have manifested an interest in the organization and who form the spearhead of the organizing campaign. The organizer again discusses with these individuals the union's program and advantages. These leading spirits perform the work of spreading the word of the union to their fellow workers and persuading them to sign up. This work is conducted so as to conceal from the employer, as far as it is possible, the existence of an organizing drive. For this reason the advanced union men conduct their activity discreetly, speaking to the men at their homes or away from the presence of their supervisors. Similarly, the organizer himself remains in the background in order not to attract attention to himself or those employes working with him, and thus generate an employer countermovement at a time when the organization is least able to resist it.

After the organizer and those acting with him have convinced a sufficient number of employes that a union is desirable, a temporary chairman is elected and a local begins to take shape. As the movement emerges organizationally, the discussions which gave rise to it become more widespread. The homes of workers, their cars, the plant yard, locker rooms, and vicinage become theatres of a continuing debate on the merits of unionism. Moreover, the debate

broadens in scope, for the emerging public character of the drive sets in motion concrete countermeasures which create new issues. The organizer and union leaders may be required, for example, to explain why an announced wage increase does not render the union superfluous, to reply to the formation of a company-sponsored rival organization or to answer personal attacks.

A point is thereby reached when the issues in the campaign are stabilized—all the reasons for joining or not joining the union which have emerged during the drive have been presented to the employees individually. At the same time the growth in the local's collective strength has made it safe to issue mass public appeals to those who have not responded to the individual appeals. Acting as an organization, it proceeds to recapitulate in a public dramatic way the arguments formerly addressed to individuals. In order to reach a large audience with the union's message, the organizer (who may have temporarily left the scene in order to initiate the organizational process elsewhere) may resort to the use of leaflets, sound trucks or mass meetings. Groups in the community whose support has been won in the cause of the campaign, such as public officials, teachers and ministers, are called upon to bring home the union's message to the employees. Officials of the union or those of other unions fraternally interested in it repeat that message at a public rally, such as the one at which Appellant spoke (R. 279-290). In short, the union exhausts the resources available to it in order to win over the reluctant or the undecided.

This entire process, from the initial furtive door to door individual appeal to the final mass campaign, depends upon basically the same technique of persuasion and discussion. No meaningful line of distinction, constitutional or otherwise, can be drawn at the point where persuasion and discussion terminate and solicitation begins. Every

argument in favor of acceptance of the union's position upon the broad and vital concerns which constitute the subject matter of its functioning is a solicitation to join it.

Because unionism involves a deep-going alteration in the worker's relationship to his job, it cannot be marketed like tooth-paste or vacuum cleaners, but must be discussed in terms of the basic public issues which it presents. A union campaign is a continuing and fluid debate and not a cinematographic series of offers and acceptances. Such discussions are an inherent aspect of the process of solicitation because employees are rarely made aware of the merits of unions through the press and other organs of opinion. Solicitation, then, of "memberships in a labor union or members for a labor union," to use the language of the statute, is a process of educating employees, of making them aware of the desirability of joining with their fellows, of overcoming prejudices and stereotypes which stand in the way of such action. We believe, for reasons already discussed at length in our Brief in No. 569, that the challenged legislation unconstitutionally interferes with this educational process.

Solicitation of membership is forwarded by the presentation of ideas in the classic constitutional sense. The desirability of collective action, the discussion of legislation and of the advantages of labor unions fall indisputably within the area of free speech. An organizing campaign is a "free trade in ideas" where the "best test of truth is the power of the thought to get itself accepted in the competition of the market." *Abrams v. U. S.*, 250 U. S. 616, 630. These ideas do not lose constitutional standing because they are addressed to the welfare of employees, because they "trench to the point of estate."

We turn now to a consideration of the thesis that Appellant's constitutional rights turn upon the size of his audience.

B. No Constitutional Line Can Be Drawn Between Addressing the Audience at Large and O'Sullivan, an Individual

It should be borne in mind that the sole difference between Appellant's speech to the audience at large and his solicitation of O'Sullivan is one of numbers. At the conclusion of his address to the audience Thomas said (R. 290) :

"Therefore as Vice-President of the C.I.O. and as a union man, I earnestly ask those of you who are not now members of the Oil Workers International Union to join now. I solicit you to become a member of a union of your fellow workers and thereby join hands with labor throughout this country in all industries. . ."

The subsequent "solicitation" was addressed to O'Sullivan alone and used his name. It seems too plain for argument that in considering the scope of Appellant's right to speak and in his speech to solicit his audience to join a specified union, it is constitutionally of no significance that the right is exercised in a large audience or distributively through individual solicitations. Speech cannot be constitutionally free only when the name of its hearer remains unspoken but not when he is addressed by name, nor may constitutional rights be conjured away by a process of division.

If this Court were to hold that the O'Sullivan solicitation may stand constitutionally on a different footing from Appellant's speech, it would in effect strip the organizational process of protection from state interference precisely at the point when it most requires it. It is at the early stages of organization when the process is a prey to every hostile force in the community that this Court would cripple it with an additional restraint. This is so because this is precisely the phase of organization which is conducted on a personal, individual, door-to-door basis. At

the very time when the organizer is seeking to avoid the mistake of publicity which might make him a victim of tar and feathers, broken bones or a police frame-up,^{*} his group of employe aides victims of discharge, and his plans for furthering the union movement vulnerable to a strategic exercise of the employer's economic power, he is required to submit to the State's prior restraint. At the point where the organizer's conduct and other civil rights, such as the right to hold a meeting, are curtailed and he depends almost exclusively on his right to speak to individuals the Court would permit that right also to be forfeited. On the other hand, when the union movement is effective and where its collective strength renders it immune to reprisal so that a public meeting is possible, then and only then would the organizer's speech become free. We believe that the Constitution is broad enough to protect from state interference not only speech at a large public meeting participated in by dignitaries, but also the initial personal appeals in workers' homes and outside the plant gates, the slow, hazardous organizing work which precedes and makes possible the speeches and rallies.

Similarly, the delays necessarily occasioned by the legislation (see our Brief in No. 569, pp. 49-57) would strike with a peculiarly effective thrust if the initial organizing process were declared subject to it. Personal solicitation uniquely characterizes the stage of the organizational process at which the organizer's access to the employes must be quick and easy. It is at this stage that the union movement is subjected to strategically-timed employer attacks. The organizer may be called upon suddenly to rally the workers and to prevent the dissipation of a union movement still insufficiently developed to survive attacks without expert guidance. A spontaneous response by workers to mass discharges may require the immediate presence of

^{*} See the cases and materials cited in our Brief in No. 569, at p. 47.

an organizer to guide an inchoate union movement. Employees may be quickly herded by supervisors into a rival organization launched by their employer. But if the Texas statute is valid, before the organizer is free to handle such urgent situations, he must seek a license from the Secretary of State and cool his heels while the union movement collapses or is discredited.

Moreover, it is at the stage of individual solicitation that the line between the organizer and his organizing group in terms of who is paid and who is unpaid is vague and amorphous. During the early stages of the organizing campaign all of those sympathetic with the union seek to forward the drive by soliciting their friends and shop-mates. If these workers were to be reimbursed by the union for the time spent in soliciting individuals, they too would be brought within the statute and compelled to register before urging their friends to join the union.

Should this Court announce that the right to solicit members for labor organizations were dependent upon the size of the audience solicited, it would not only fashion a distinction which has no rational basis, but would in effect permit a right to lose constitutional significance at the precise point where its unencumbered exercise is indispensable to reach and change the minds of men.

C. A Constitutional Distinction May Not Be Drawn Between the Speech and Solicitation in Terms of Their Content

The line between O'Sullivan, an individual, and the remainder of the audience, a large number of individuals, fades as soon as it is drawn. May the speech and the solicitation support any other constitutionally valid distinction? Even if it were assumed that the speech itself did not contain the solicitation at its conclusion, quoted above (*supra*, p. 9), no constitutional distinction between the

speech and the O'Sullivan solicitation could be drawn. We do not believe that for constitutional purposes advocacy in behalf of a specified labor union may be separated from a request to join it. Appellant's speech, apart from its explicit solicitation at the close, is, we submit, an indisputable appeal, request and solicitation to join the Oil Workers International Union.

Thus, he announced at the outset of his speech (R. 281) that he would describe the benefits of C.I.O. unions, and that he intended "to ask them to join the Oil Workers International Union." He stated that the purpose of organizing the oil industry was to raise the standard of living of the employes, to give them effective voice in the affairs of government, to increase production, that oil workers had joined the union for the same reason that doctors and lawyers had organized. He stressed the importance of affiliation with the C.I.O., elaborated the grievances which were the concern of the union (R. 283), the improved conditions which it offered, the character of the employer interests opposed to the union (*id.*), the contributions of unions to war production, the relationship of the wage structure of one industry to that of another, and the importance of united action (R. 283-290). All of this was spoken at an organizing rally sponsored by prominent union organizers (R. 279).

If language has meaning, each member of Appellant's audience was solicited in the most urgent and unmistakable way to join the Oil Workers Union. It is true, as we have assumed for purposes of this discussion, that the formula, "I solicit you to join the Oil Workers International Union" is absent from Appellant's speech. However, if such a formula were substituted for the speech, its invitation to join, its directive thrust, would be far less urgent.

Hence, since the Constitution deals with realities and

not abstractions, if the statute is unconstitutional in its application to the speech, its validity is not saved by confining it to the solicitation. Any other view would elevate the ritualism of a verbal formula to the level of a constitutional distinction which clear and simple meaning denies.

Trade unionism is not a compendium of abstract principles but a program of group action. Moreover, it is a program which presents to workingmen and women concrete, vital, irreconcilable choices.⁶ To suggest that this program may be forwarded and constitutionally protected so long as allegiance is enlisted but not when affiliation is sought, so long as sympathy is promoted but not membership, would be to allow the right of free speech to function in a vacuum. Free speech would not be the precious right it is if the constitutional shield were withdrawn from it at the point where it confronts men with a practical choice in the realm of conduct. Cf. *Abrams v. United States*, 250 U. S. 616, 630. In the context of labor relations, the distinction between advocacy and solicitation is not one of kind and, indeed, scarcely one of degree. It is assuredly a distinction without constitutional dimension. If the right to speak in behalf of a union is to be freely exercised, it must include the right to solicit membership therein. Fair exercise of the former right necessarily involves the latter.⁷

Moreover, the living content of the right which such a distinction would protect is vague and indefinite. Would an organizer be required to register if he urged the merits of a particular union, but not if he praised unions gen-

⁶ *Gompers v. United States*, 283 U. S. 604, 610.

⁷ See *J. I. Case Co. v. N.L.R.B.*, 321 U. S. 332.

⁸ Compare the right to proselytize as an aspect of religious freedom. *Martin v. City of Struthers*, 399 U. S. 141. This is not to suggest that the right to proselytize is constitutionally indistinguishable from the right to solicit. Each civil right functions constitutionally through forms appropriate to its purpose and history. Cf. *Gompers v. United States*, 283 U. S. 604, 610. We do contend, however, that purpose and history link solicitation and speech as intimately as proselytization and the practice of religion.

erally? Would he be required to register if he voiced a broad appeal to support the union's organizing drive but was careful not to particularize the manner in which such support was to be forthcoming, if he praised the union's achievements and the advantages of membership but at no time requested his audience to join? Would speech otherwise constitutionally protected become subject to the state's restraint because uttered during an organizing campaign? Would the same be true if uttered during a campaign to obtain designation as a collective bargaining representative? Would an unregistered organizer be placed in default under the statute if he urged that his hearers make the X plant a union plant or Y town a union town? Would union literature, otherwise immune, subject its issuer to the statute because it was subscribed with the name and address of the union? Would the great body of union campaign literature which deals with specific issues of wages, hours and working conditions, which offers a bread-and-butter inducement to join but no specific invitation, constitute solicitation of membership within the meaning of the statute?

In short, whether the statute is interpreted, on the one hand, as placing a taboo only on the formula, "I solicit you to join the X union" or, on the other hand, as including within its scope speech reasonably calculated to induce men to become members of a union, it cannot be constitutionally sustained. Cf. *Stromberg v. California*, 283 U. S. 359, 369; *Herndon v. Lowry*, 301 U. S. 242, 258-259.

The verb "to solicit," which is used in the challenged statute, asks profound constitutional questions in the area of free speech. This is so even where the conduct solicited is criminal.⁸ The object of the solicitation restrained by the State of Texas is not criminal conduct but the forma-

⁸Chafee, *Free Speech in the United States* (Cambridge, 1941), pp. 23, 44, 46-49, 81-82, 115, 145, 152-153, 171.

tion of labor organizations. This Court and Congress have made clear that formation of labor organizations is to be encouraged in the public interest, that the right to form them "is a fundamental right." *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1. The formation of labor unions is not only a basic federal right,⁹ but it is one which has plain constitutional status.

The process of group formation in the public interest, of which the organization of trade unions is perhaps the most vigorous example of our time, is the fulfillment of democracy. It is the exercise to the fullest extent of the right of freedom of speech, freedom of the press, freedom of petition and freedom of assembly. In the formation of a labor organization the exercise of these rights are directed in an integrated way to winning the minds of men to the acceptance of the idea of collective rather than individual disposition of problems arising out of the employment relationship. Solicitation of members for a labor organization is an aspect of that integrated exercise of liberties involved in group formation. When such solicitation is undertaken by a paid organizer, it remains an exercise of constitutional liberty and is not suddenly converted into a commercial transaction or an exchange of goods for money. The challenged legislation interferes with "the essential attributes of that liberty."¹⁰ Traditionally in the United States groups formed in the public interest have nourished and renewed the roots of our democracy.¹¹ The processes whereby such

⁹ See the Government's Brief *amicus curiae*.

¹⁰ *Near v. Minnesota*, 283 U. S. 697, 708.

¹¹ The unique contributions of voluntary associations, other than political parties, to the formation and strengthening of democratic processes and institutions in the United States has been the subject of frequent comment. On the significance of groups in American life, see Schlesinger, *The Rise of the City—1878-1898* (New York, 1933), pp. 409-410; Bryce, *The American Commonwealth* (New York, 1910), p. 294; de Tocqueville, *Democracy in America* (New York, 1900), pp. 114-118. On the vital role played by voluntary groups in the founding of the American republic, see Van Tyne, *The Causes of the War of Independence* (Boston, 1922), pp. 373, 374-376, 427-428 (Committees of Correspondence).

On the contributions of groups and voluntary associations in particular fields, see Race Relations:

Hobbs, *The Antislavery Impulse* (New York, 1933); McMaster, *History of*

groups are formed should be jealously kept free of restraint. Compare *U. S. v. Carolene Products*, 304 U. S. 144, 152. This is particularly urgent where formation of labor organizations is involved, since such organizations exist and function for the express purpose of exercising constitutional rights (Brief, pp. 21-26).

II. THE COURT'S QUESTIONS.

Question No. 1

Does the Texas Act by judicial or administrative construction require a registration or license before making the speech made by Thomas—if it had omitted the O'Sullivan solicitation?

At the outset it should be pointed out that the Act on its face makes no distinction between soliciting a single individual by name and soliciting an audience at large. Section 5 of the Act merely states that the organizer must

the People of the United States (New York, 1895), Vol. II, p. 21; Myrdal, *The American Dilemma* (New York, 1944), Vol. II, pp. 810-857.

Peace Movements:

Curti, *American Peace Crusade* (Durham, N. C., 1929); Schlesinger, *The Rise of the City* (New York, 1933), pp. 365-366.

Economic Relations:

Hinds, *American Communities and Cooperative Colonies* (Chicago, 1908); Noyes, *History of American Socialisms* (Philadelphia, 1870); Adams, ed., *History of Cooperation in the United States*, Vol. VI, Johns Hopkins Studies in Historical and Political Science (Baltimore, 1888).

Women's Rights:

Schlesinger, *Age-Long Points in American History* (New York, 1926), pp. 126-160.

Public Schools and Adult Education:

Curti, *The Growth of American Thought* (New York, 1943), pp. 349-352, 596-597; Post, *Popular Free Thought in America* (New York, 1943), p. 87.

Land Reform and Colonization:

Zahler, *Eastern Workingmen and National Land Policy* (New York, 1941); McMaster, *op. cit.*, Vol. VI, p. 109.

Agricultural Associations:

Oberholzer, *A History of the United States Since the Civil War* (New York, 1926), Vol. III, pp. 102-109; Hicks, *The Populist Revolt* (Minneapolis, 1931).

Humanitarian and Related Movements:

Fish, *Rise of the Common Man* (New York, 1927), pp. 259-260; Stewart, *The National Civil Service Reform League* (Austin, Tex., 1929); Nevins, *The Emergence of Modern America* (New York, 1927), p. 334; McCrea, *The Humane Movement* (New York, 1910).

obtain a license "before soliciting any members for his organization." The fact that no restrictive limitation distinguishing the speech from the solicitation is present in the statute seems evident from Section 2(c) of the statute. This Section defines organizer to mean "any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union."

The sole clue which the record affords with respect to the administrative construction of the statute is contained in the position of the Attorney General's office at various stages of the litigation. This, we believe, is of some significance since the Attorney General is the attorney for the administrative offices of government (R. 78; cf. *Ex parte Texas*, 315 U. S. 8).

In the state's petition for injunction the Attorney General set forth as the basis for an injunction (R. 292):

"That the defendant is scheduled to speak at a mass meeting to be held at the City Hall in Pelly, Harris County, Texas, on Thursday night, September 23, 1943, and that at said meeting the defendant will solicit memberships in a labor union and members for a labor union. . . . The defendant has publicly announced the intention of addressing said mass meeting and soliciting those present . . ."

"The plaintiff further shows that there is not sufficient time before defendant makes the threatened speech for a notice to be served on him. . . ." [Italics supplied.]

In the State's Motion for contempt, it was urged by the Attorney General as ground for holding Appellant in contempt (R. 297-298):

"At said time and place said R. J. Thomas in violation of the Court's order did openly and publicly solicit an audience of approximately 300 persons . . . to then and there join and become members of said Oil Workers International Union."

" . . . the acts of R. J. Thomas above alleged were in

open and flagrant violation of the order of this court and the writ issued pursuant thereto. . ."

It seems clear from the above statements that the Attorney General is of the view that the statute does in fact require "a registration or license before making the speech made by Thomas," even if Thomas had omitted the O'Sullivan solicitation. It is fair therefore to assume that the Secretary of State will administer the statute pursuant to such interpretation.

Moreover, the district court so construed the statute in issuing its injunction as to include the mass solicitation. (R. 294, 304.) It thus described Appellant's violation of the injunction (R. 318) :

"Thereafter the relator, who was a paid representative of the union, violated the terms of the injunction by soliciting *members* for said union. . ." [Italics supplied.]

In view of the fact that the Attorney General in his Brief submitted to the court below had stated that one of the grounds of the contempt was the O'Sullivan solicitation, it seems correct to say that this was not "a casual and unconsidered use of the plural." *Pollock v. Williams*, 322 U. S. 4, 23.

We therefore submit that Question No. 1 must be answered in the affirmative. Any suggestion that the scope of the statute is confined to the O'Sullivan solicitation finds no support in the proceedings which plainly reflect the judgment "of the state as a whole" that the statute forbids the speech. Cf. *Rippey v. Texas*, 193 U. S. 504, 509; *Missouri v. Dockery*, 191 U. S. 165, 171.

Question No. 2

Did the injunction forbid the speech (apart from O'Sullivan's solicitation) and is the order of contempt based in

whole or in part on such speech? If not, is the speech used as an aggravation of the offense? If neither, what is the purpose and effect of its recital in the papers and orders in this proceeding?

1. Did the injunction forbid the speech?

The petition which gave rise to the injunction alleged in support of its issuance (R. 292) that,

"... defendant is scheduled to speak at a mass meeting to be held at the City Hall in Pelly, Harris County, on Thursday night, September 23, 1943, and that at said meeting the defendant will solicit memberships in a labor union and members for a labor union. . . The defendant has publicly announced his intention of addressing said mass meeting. . ."

The basis upon which the Attorney General went to the trial court for an injunction was therefore clearly the "threatened speech" which Thomas proposed to deliver.

Upon this allegation in the State's petition the court granted an injunction in the following language (R. 294):

"It is therefore, Ordered, Adjudged and decreed that R. J. Thomas be and is hereby restrained and enjoined from soliciting memberships in Local Union No. 1112 of the O.W.I.U., and members for Local Union No. 1002 of the O.W.I.U. and from soliciting members in any other labor union affiliated with the C.I.O. while said defendant is in Texas without first obtaining an organizer's card as required by law."

It seems plain that the injunction was not confined to the individual solicitation but included the speech. This is clear not only from the face of the injunction but the allegations of the petition:

"The writ should be construed in the light of the allegations of the petition, the subject matter of the suit, and the objects therein sought." *Nystel v. Thomas*, 42 S.W. (2d) 168, 172 (Tex.).

2. Is the order of contempt based in whole or in part on such speech?

The answer to this question must necessarily be an affirmative one. The petition for injunction based itself upon the speech (*supra*, p. 19). The State's Motion for contempt (R. 297) alleges not only the O'Sullivan solicitation but also, in a separately numbered paragraph, the public solicitation "of an audience of approximately 300 persons . . . all employees of the Humble Oil & Refining Company's plant at Bay Town" as an "open and flagrant violation of an order of" the court.

∴ Evidence adduced at the contempt hearing to show Appellant's violation of the order included a verbatim copy of the speech, and only incidentally the direct solicitation of O'Sullivan (R. 4-5, 279-290). While the order of contempt does not specifically find the speech to be an act of contempt, any suggestion that the speech formed no basis for it can only be an afterthought, for the speech unifies and forms the dominant content of the petition for injunction, the Motion for contempt and the evidence offered at the contempt hearing. See *Nystel v. Thomas, supra*.

Question No. 3

Assuming the speech to be immune and assuming the words addressed to O'Sullivan to be a violation of a valid prohibition of solicitation, what is the effect on its constitutional validity of including both in one injunction?

We believe that the answer to this question must be that both the statute and the injunction are unconstitutional. The speech and the solicitation derive from precisely the same section and sentence in the statute. Since the statute has been authoritatively construed to restrain both (*supra*, pp. 16-19), the statute cannot now be redrafted to address itself to a field of conduct which is narrower than that

which its authors contemplated. Nor is this an academic consideration, for it would manifestly require a precise draftsmanship and a clearly articulated intent to differentiate speech which is constitutionally protected from a solicitation emerging from it which is not. Compare *Jones v. City of Opelika*, 319 U. S. 103, reversing 316 U. S. 584; *Thornhill v. Alabama*, 310 U. S. 88, 97; *Stromberg v. California*, 283 U. S. 359, 368; *Williams v. North Carolina*, 317 U. S. 287, 292.

The injunction is in terms of and exhausts the statute. They both must be given a like construction, and since the statute is unconstitutional, the injunction is not saved because as an abstract matter it contains a restraint which might be validly issued should the legislature deem it wise to do so.

Moreover, whether or not the Court's assumption (*supra*) leaves standing a restraint which may be fairly attributable to the legislative purpose, it is plain that the injunction itself may not now be validly confined to a non-Federal subject matter. Since the entire proceeding embraced both the speech and solicitation and there is now no way of knowing whether the injunction would have issued, and indeed, whether the Attorney General would have sought it in the first instance, if he had not assumed that the speech were enjoinable under the Constitution, the injunction must in its entirety be held unconstitutional. Any other view gives standing to the State's afterthoughts and countenances a serious impairment of Appellant's constitutional rights. See cases cited, *supra*.

Question No. 4

Assuming the injunction invalid as applied to the speech, what was the duty of Thomas in respect to obedience so long as it was not set aside?

The circumstances under which the injunction was issued and violated throw some light upon the propriety of Appellant's conduct with respect to the injunction. Appellant had been invited by the Oil Workers International Union, Local 1002, to address a meeting on the evening of September 23, 1943, at the City of Pelly, Texas (R. 5, 279). The meeting was conducted as part of a campaign to organize the employes of the Humble Oil Company, located in the adjoining community of Baytown (R. 5, 279). The focus of this organizing campaign, conducted in the teeth of strong company resistance,¹² was a proceeding then pending before the National Labor Relations Board for an election (R. 33-34). To further this campaign, Appellant accepted the invitation to speak and journeyed from his home in Detroit, Michigan, for that purpose (R. 22-23, 33).

On September 22, shortly after Appellant arrived at Houston, the Attorney General of Texas, upon the basis of newspaper accounts that Appellant was scheduled to speak at the meeting the following day, filed a complaint in the 53rd District Court in Austin, Travis County, a distance of 167 miles from Houston, Harris County, seeking a temporary restraining order and temporary and permanent injunction to restrain Appellant from soliciting members in any C.I.O. union without first obtaining an organizer's card (R. 291-294). Judge Gardner of the Travis County District Court issued, *ex parte*, a temporary restraining order enjoining Appellant while in the State of Texas from soliciting members in the Oil Workers International Union or any other labor organization without first obtaining an organizer's card and also issued an order that Appellant appear before him on September 25, 1943.

¹² See *Matter of Humble Oil & Refining Co.*, 16 NLRB 112, 114-115, 116-134, enforced as modified in 113 F. (2d) 85 (CCA 5); *Matter of Humble Oil & Refining Co.*, 48 NLRB 118, enforced in 140 F. (2d) 777 (CCA 5); *Matter of Humble Oil & Refining Co.*, 53 NLRB 116, 120, n. 7.

two days after the scheduled meeting, to show cause why a temporary injunction should not issue (R. 294-295, 315-317). The temporary restraining order and the order to show cause were served on Appellant approximately five hours prior to the scheduled meeting (R. 35).

Appellant decided to deliver his speech as planned not only because of his conviction that both the Constitution and the National Labor Relations Act protected his right to make it, but also because preparations for the meeting had already been made and the Attorney General had taken the position that an earlier action to enjoin enforcement of the statute was improperly brought (R. 36, 48-72, 75-78).

We believe that under these circumstances Appellant properly refused to be muzzled (compare *Lovell v. Griffin*, 316 U. S. 452, 453; *Jones v. City of Opelika*, 319 U. S. 103, reversing 316 U. S. 584) and that only a mechanical application of the doctrine restricting collateral attack upon injunctions would place Appellant in default.¹¹ We must remember that we are dealing with labor relations which have a highly perishable *status quo*. If Appellant were required to abide by the injunction and to test his constitutional rights by direct appeal, the occasion for their exercise would have entirely disappeared. Compare Frankfurter and Greene, *The Labor Injunction* (New York, 1930), Appendix II.

Insofar as the Court's question with respect to Appellant's duties under the injunction is directed to his status to raise the constitutional issues involved here, it need only be pointed out that the Supreme Court of Texas refused to hold that Appellant had lost his right to urge the unconstitutionality of the Act because he had violated an injunction. Compare *Cooper Company v. Los Angeles Building Trades*

¹¹That rigid application of this doctrine is unwise in this field, see "Collateral Attacks Upon Labor Injunctions," 47 Yale L. J. 1136.

Council, et al, 15 Labor Relations Reporter 46, decided August 21, 1944 (Cal. Sup. Ct.) Although the Attorney General urged upon that court that Appellant's contumaciousness deprived him of standing to raise the constitutional question in a Motion to dismiss the application for writ of habeas corpus, the court overruled such Motion.¹⁷ Since restrictions upon collateral attacks upon injunctions as applied to judgments of courts in the same judicial system reflect a pragmatic local view of the needs of an orderly system of administering justice,¹⁸ we submit that the judgment of the Supreme Court of Texas in this respect should be followed. Since that court did not think that Appellant was disabled to raise the constitutional question involved in this proceeding, we need not consider the consequences of his contumaciousness under other circumstances. See *Yakus v. United States*, 64 S. Ct. 660.

Question No. 6¹⁹

Assuming that petitioner had a constitutional right to make a general argument and solicitation to the entire assembly of workers, should the State punish him in a single penalty because he picked out one member of the assembly and addressed a solicitation to him by name?

This question has already been fully treated (*supra*, pp. 4-16). It is sufficient to repeat here that constitutional rights to free speech cannot be made to turn upon whether the hearer is addressed by name or the number of hearers addressed.

¹⁷ Both the Motion to dismiss and the Order overruling the Motion to dismiss are unprinted (See p. III).

¹⁸ The considerations underlying such a view were thoroughly canvassed in a Brief submitted by the Attorney General in support of its Motion to dismiss the application for writ of habeas corpus. The attack upon Appellant's standing to raise his objections to the legislation has apparently been abandoned by the Attorney General in this Court.

¹⁹ Discussion of Question No. 5 is omitted, see *supra*, p. 4, note 2.

CONCLUSION

The organizer, made familiar by years of horrendous propaganda as the "outside agitator," has in the past been a favored target of the lawless state. Access to the minds of employes has been, frequently and in many areas, denied him or granted by the state upon such terms as to make it valueless. The process of keeping alive and expanding such access is one which functions through the constitutional guarantees. Few groups have suffered the invasion of such guarantees more consistently than trade union organizers.¹⁷

The challenged legislation is not an isolated phenomenon. It is a part of a body of legislation, greatly influenced by wartime emotions, which seeks to revive in new forms the historic attacks upon organizers and trade unions, to burden and cripple the constitutional mechanisms of access.¹⁸

Appellant's objection to the challenged legislation is neither formal nor abstract. The statute, while clothed in the ill-fitting garb of an occupational registration to prevent fraud (compare *Pollock v. Williams*, 332 U. S. 4), virtually suppresses a right. This is so both because it destroys anonymity, which is vital to its exercise, and enmeshes it with a delay fatal to its effectiveness. These are grave social and constitutional consequences not merely in the negative sense that a section of the market place of ideas has been blacked out, but also in the positive sense

¹⁷ See, for example, *Hague v. C.I.O.*, 307 U. S. 496; *Anderson v. United States*, 318 U. S. 350; *Bridges v. California*, 314 U. S. 252; cf. *Mooney v. Holohan*, 294 U. S. 103; see also, the cases and materials cited in our Brief in No. 569, at p. 47 and Baldwin and Randall *Civil Liberties and Industrial Conflict* (Cambridge, 1938). As the materials cited in our Brief in No. 569 indicate, organizers in Texas experience unusual difficulties in their efforts to maintain access to the industrial population. The campaign of terror against the organizers and leaders of the Oil Workers International Union attained such proportions in that State that the Union was compelled to obtain an injunction on February 25, 1942, restraining the Chief of Police of the City of Port Arthur and his subordinates from *inter alia*, "illegally arresting, threatening to arrest, harassing, beating, bruising, or intimidating" them. 10 Labor Relations Reporter, 76-77.

¹⁸ See Dodd, *Some State Legislatures Go to War—On Labor Unions*, 29 Iowa Law Rev. 148 (1944).

that Congress has stated that the spread of such ideas should be fostered. Finally, by its grave injury to the right of organizers to speak, the challenged legislation sterilizes other civil rights which are exercised in the formation and functioning of labor organizations.¹⁹

Respectfully submitted,

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September, 1944.

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¹⁹ The recent stream of statutes and ordinances purporting to regulate labor unions seems to be directed to fundamentally anti-union purposes. These measures have largely originated in areas where labor unions are weak and impotent or where the organized anti-unionism of powerful employer groups has captured control of the legislative machinery. See Dodd, *op. cit.*, *supra*, and Owens, *A Study of Recent Labor Legislation*, 38 Ill. L. Rev. 309 (1944). In a recent report, the Senate Committee on Education and Labor (S. Rep. 398, part 5, 78th Cong. 2nd Sess., p. 1694) has warned that:

"All such proposed regulatory measures must and should be examined closely and deliberated upon carefully to make sure that under the cover of regulation in the public interest an organized anti-unionism is not foisting upon us legislation that will destroy or stifle the rights of labor that are fundamental to an economic democracy.

"We must distinguish between regulation in the public interest and in the interest of anti-union employers. Such insistence will result from public awareness rather than the self-imposed discipline of anti-union employers who provide the backbone of support for this type of law.

"It is our further conclusion that anti-union employer groups, which, after seven years, refuse to accept finally the principles of industrial democracy, have sought and will continue to seek to shackle the rights of labor through legislation purporting to regulate labor union activities in the public interest. It is a bold but logical tactic for those who feel constrained by a national law that protects from coercion by employers the rights of employees to organize and bargain collectively. Such tactics hold great dangers for the rights of labor and industrial democracy.

"The past decade has witnessed the march of totalitarian tyranny across the face of Europe. Its invariable accompaniment has been efforts by powerful industrial interests on political dictators alike to replace free trade-unions with state-controlled labor fronts and to restrict by State edict the rights of labor to the point of extinction. In the shadow of this unvarying pattern those who would unhesitatingly encourage the drastic curtailment and regulation of trade-unions must reckon with the risks entailed."

As this case is being considered a new wave of identically-worded ordinances has appeared in widely separated cities and towns purporting to license and register organizers but admittedly designed to halt organization entirely. See, for example, *Ordinance of City of Newnan, Georgia* (1944); *Ordinance of City of Blytheville, Arkansas* (1944); *Ordinance of City of Athens, Tennessee* (1944); *Ordinance of Milledgeville, Georgia* (1944).

SUPREME COURT OF THE UNITED STATES

COPY
CLERK

OCTOBER TERM, 1943

No. [REDACTED] 14

R. J. THOMAS,

Appellant,

vs.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS.

STATEMENT OPPOSING JURISDICTION.

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Attorney General of Texas,

FAGAN DICKSON,

Assistant Attorney General of Texas,

Counsel for Appellee.

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IN THE SUPREME COURT OF THE STATE OF TEXAS

EX PARTE R. J. THOMAS.

STATEMENT IN OPPOSITION TO JURISDICTION.

To the Honorable the Supreme Court of the United States:

I.

The contempt order based on Section 5 of Article 5154a, Vernon's Annotated Civil Statutes of Texas does not abridge appellant's right of free speech.

The verified petition of Appellee on which the temporary restraining order was issued against Appellant, contained this allegation:

"The plaintiff further shows that the defendant as President of U. A. W. and Vice-president of C. I. O. is engaged in the business of organizing employees of industrial plants in Texas and throughout the United States into labor unions affiliated with the C. I. O. and that if he makes the solicitations, as threatened, without an organizer's card from the Secretary of State, as required by said House Bill No. 100, he will be flouting the Texas law and acting in defiance of it."

The acts on the part of Appellant for which he was adjudged to be in contempt of the trial court's temporary restraining order, were alleged in the Motion for Contempt as follows:

"That on the 23rd day of September, 1943, at the City Hall in Pelly, Harris County, Texas, the said R. J. Thomas, without procuring an organizer's card as re-

quired by law of labor organizers and without making application to the Secretary of State for such a card, did at said time and place solicit Pat O'Sullivan, a resident of Bay Town, Texas, and an employee of the Humble Oil & Refining Company's plant at Bay Town to join a local union of the Oil Workers International Union, which said union is affiliated with the Congress of Industrial Organizations of which said R. J. Thomas is Vice-president. The said O'Sullivan at said time was not a member of the local union of the Oil Workers International Union and said R. J. Thomas then and there did take his application to become a member, all in violation of this court's order and the writ of temporary restraining order issued pursuant thereto."

The evidence supported these allegations and the judgment in contempt is based thereon. The issue therefore does not involve Appellant's right to make a speech, but it involves his solicitation as an unregistered labor organizer engaged in the business of organizing labor unions of a particular individual to join a named union. The solicitation here alleged and proved consisted in Appellant's act of taking the application of a non-member for membership in a labor union. The acts for which Appellant is being punished accordingly involve something more than speech making.

The very essence of "previous restraint" on free speech which is prohibited by the Fourteenth Amendment is censorship. Section 5 of Article 5154a, Vernon's Annotated Civil Statutes of Texas was not designed for censorship. This statute, as applied against Appellant, did not amount to a censorship. There is no evidence that the statute has been or will ever be used or applied by the officials of the State of Texas in order to accomplish a censorship. The Supreme Court of Texas has decided these points and its judgment on these points is final. The Section of the Statute here involved is nothing more than a registration statute.

and it is clearly a proper exercise of the police power of the State of Texas. The cases cited in the opinion of the Supreme Court of Texas fully support its decision.

II.

Section 4a of Article 5154a, Vernon's Annotated Civil Statutes of Texas is not involved in this appeal.

The Appellant Thomas testified that he was born in Ohio (S. F. 42) and there is no evidence that he has been convicted of a felony. The Supreme Court of Texas did not pass on the constitutionality of Section 4a of the Act. Section 4a of the Act reads as follows:

"It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This Section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored."

Section 15 of the Act contains a severable clause which reads as follows:

"Sec. 15. * * * If any Section or part whatsoever of this Act shall be held to be invalid, as in contravention of the Constitution, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid."

Under this provision, Section 5 of the Act may be valid and enforceable and the judgment of the Texas Supreme Court accordingly correct, even though this court should be of the opinion that Section 4a of the Act is invalid. However, Section 4a of the Act, in our opinion, constitutes a proper exercise of the police power of the State of Texas. The quality and allegiance of those who organize, lead and

represent large groups of working men within the State of Texas are matters of high importance and affect the safety and the economy of the State itself. The Appellant Thomas testified in the trial court that increased political activity in the State of Texas was one of the objectives of his labor union and those with whom his union was affiliated (S. F. 82). Since aliens and felons have no political rights under our Government, it is no denial of due process or of equal protection of the laws to prohibit them from occupying positions of power and leadership through which they can materially influence the political life of the State.

Section 4a is clearly a valid exercise of the State's police power under the principles announced by this court in the case of *Terrace v. Thompson*, 263 U. S. 197, 44 Sup. Ct. 15, 68 L. Ed. 255.

Wherefore, the State of Texas prays that this appeal be dismissed for want of jurisdiction.

Respectfully submitted,

(Signed)

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(9697)

APR 26 1944

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

R. J. THOMAS,

Appellant

v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,

Appellee

Appeal from the Supreme Court of Texas

BRIEF FOR APPELLEE

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Texas.

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NO. 569

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

R. J. THOMAS,

Appellant

v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,
Appellee

Appeal from the Supreme Court of Texas

BRIEF FOR APPELLEE

This brief is directed to the question of jurisdiction as well as to the merits in view of the Court's order on March 27, 1944, that "Further consideration of the question of the jurisdiction of this Court in this case is postponed to the hearing on the merits." We have undertaken to reply to the points on which appellant has announced he will rely as well as to

certain arguments made by appellant in the Court below, without waiting for a copy of his brief.

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Texas in this case is reported under the style of *Ex Parte Thomas*, 141 Tex. 591, 174 S. W. (2d) 958, and is copied in the record at pages 318-326.

STATEMENT OF THE CASE

This is an appeal from a judgment of the Supreme Court of Texas denying appellant's release on a writ of habeas corpus. The appellant is under sentence for contempt of a District Court of Texas for violating a restraining order enjoining him from soliciting members for a labor union in Texas without first procuring an organizer's card as required by Section 5 of Texas' 1943 Labor Regulatory Law. (Article 5154a, Vernon's Annotated Texas Civil Statutes).

The Supreme Court of Texas in its opinion states the case as follows:

"The State filed suit in the trial court, alleging that the relator was a labor organizer within the meaning of the Act, who for pecuniary or financial consideration was engaged in soliciting members for a certain labor union; that he had not previously applied to nor obtained from the Secretary of State an organizer's card, as provided for in Section 5 of the Act; and that he was threatening to and would violate the pro-

visions of said Section 5 of the above Act by soliciting members for said labor union in Texas, unless he was restrained from so doing. The trial court issued a temporary restraining order and caused notice thereof to be served on the relator. Thereafter the relator, who was a paid representative of the union, violated the terms of the injunction by soliciting members for said union without having first registered with the Secretary of State as provided for in said Section 5. After a hearing he was adjudged to be in contempt of court and his punishment fixed at a fine of \$100 and confinement in jail for three days. There is no question as to the sufficiency of the pleadings or the regularity of the proceedings in the contempt action, nor is there any contention that the facts were insufficient to show a violation of Section 5 of the Act. Relator's counsel in his argument before this court conceded the existence of the necessary factual basis for the judgment in the contempt proceedings."

The sentence imposed by the District Court was the maximum punishment permitted by Texas Statutes.¹ The appellant Thomas filed an application for a writ of habeas corpus with the Supreme Court of Texas, which was granted and the appellant was released on bond. Upon the hearing on the writ, the Supreme Court of Texas, denied the petition for discharge and remanded appellant to the custody of ap-

¹Art. 1911, R. S. of Texas, 1925, reads as follows: "The District Court may punish any person guilty of contempt of such court by fine not exceeding \$100 and by imprisonment not exceeding three days."

— 4 —

pellee "in order that the judgment of the District Court may be enforced."

SUMMARY OF THE ARGUMENT

Counter Point No. 1

Section 5 of Article 5154a, Vernon's Annotated Texas Civil Statutes, as construed by the Supreme Court of Texas is a registration statute applicable only to those persons engaged in the occupation or business of labor organizing and on the basis of this construction no constitutional question is involved.

Olsen v. Nebraska, 313 U. S. 236

California v. Thompson, 313 U. S. 109

Selmer v. Oregon State Board of Dental Examiners, 294 U. S. 608

People of the State of New York, ex rel Bryant v. Zimmerman, 278 U. S. 63

Clark v. Paul Gray, Inc., 306 U. S. 583

Hendrick v. Maryland, 235 U. S. 610.

1-z. The statute as enacted and as applied does not abridge freedom of speech.

Carpenters & Joiners Union v. Ritter's Cafe, 315 U. S. 722

Cox v. New Hampshire, 312 U. S. 569

City of Manchester v. Leiby, (1 cir.) 117 Fed. (2) 661, certiorari denied, 313 U. S. 562

Cantwell v. Connecticut, 310 U. S. 296, 304, 306

Chaplinsky v. New Hampshire, 315 U. S. 568

Valentine v. Chrestensen, 316 U. S. 52

Prince v. Commonwealth of Massachusetts, 88
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Milk Wagon Drivers Union v. Meadowmoor
Dairies, 312 U. S. 287.

1-b. The statute as enacted and as applied does not
deny appellant equal protection of the laws.

People of the State of New York, ex rel Bryant
v. Zimmerman, 278 U. S. 63
Lindsley v. National Carbonic Gas Co., 220 U. S.
61
Tigner v. Texas, 310 U. S. 141
Williams v. Arkansas, 217 U. S. 79
Semler v. Oregon State Board of Dental Exam-
iners, 294 U. S. 608, 610
Watson v. Maryland, 218 U. S. 173, 178

1-c. The statute as enacted and as applied does not
impose an undue burden on interstate commerce.

California v. Thompson, 313 U. S. 109
Hendrick v. Maryland, 235 U. S. 610, 622-624

1-d. The statute as enacted and as applied does not
cover a field which is pre-empted by Federal laws.

Allen-Bradley Local v. Wisconsin Employment
Rel. Bd. 315 U. S. 740.
Terminal Railroad Ass'n of St. Louis v. Brother-
hood of Railroad Trainmen, 318 U. S. 1

Counter-Point No. 2

Section 4a of the Texas Law, which denies aliens

and felons the right to serve as labor organizers as defined in the Act, is severable under Section 15 from the remainder of the Act, and the decision of the Supreme Court of Texas on the question of severability is conclusive on this court.

Dorchy v. Kansas, 264 U. S. 286

Truax v. Corrigan, 257 U. S. 312, 341-342

Allen-Bradley Local v. Wisconsin Employment Relations Bd. 315 U. S. 740, 747, 748

Howat v. Kansas, 258 U. S. 181

Hendrick v. Maryland, 235 U. S. 610, 621

Counter-Point No. 3

Section 4a of the Texas Act, which denies to aliens and felons the right to serve as labor organizers as defined in the Act, is constitutional.

Terrace v. Thompson, 263 U. S. 197

Crane v. New York, 239 U. S. 195

Porterfield v. Webb, 263 U. S. 225

Ohio ex rel Clarke v. Deckebach, 274 U. S. 392

Trageser v. Gray, 73 Md. 250, 20 A. 905, 9 L. R. A. 780, 25 Am. St. Rep. 587

Commonwealth v. Hana, 195 Mass. 262, 81 N. E. 149 11 L. R. A. (N.S.) 799

ARGUMENT

Counter Point 1

Section 5 of Article 5154a, Vernon's Annotated

Texas Civil Statutes, as construed by the Supreme Court of Texas is a registration statute applicable only to those persons engaged in the occupation or business of labor organizing and on the basis of this construction no constitutional question is involved.

The Attorney General of Texas appears in this case on behalf of appellee pursuant to Section 13¹ of the Act in controversy. The Attorney General filed the original suit for injunction against appellant and represented the State in obtaining the judgment against appellant for contempt of court. R. 291, 295.

The judgment for contempt was rendered on September 25, 1943, by a District Court of Travis County, Texas, a constitutional court of general jurisdiction (Sec. 8, Article 5, Texas Constitution) pursuant to jurisdiction expressly conferred by Section 12² of the Act in controversy.

Section 5 of the Act in controversy provides:

“All labor union organizers operating in the State of Texas shall be required to file with

¹Section 13 of Art. 5154a, V.A.T.C.S. is as follows:

“It is hereby made the duty of the Attorney General and the District Attorneys and County Attorneys of this State, within their respective jurisdictions to prosecute any and all criminal proceedings and to institute and maintain any and all civil proceedings herein authorized for the enforcement of this Act.”

²Section 12 reads as follows:

“The District Courts of this State and the judges thereof shall have full power, authority and jurisdiction, upon

the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full (b) his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation, 'labor organizer'; and (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership."

The statute does not make any provision for the expiration or cancellation of organizers' cards after they have been issued.

Section 2-(c) provides: "'Labor organizer' shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union."

the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said courts."

Our view of this case is—first, that this appeal involves only Sections 5 and 2 (c) of the Act as quoted above; that Section 2 (c) defines an occupation or business (paid labor organizer) which may be subjected to reasonable regulations under the State's police power and that Section 5 as construed by the Supreme Court of Texas is a reasonable regulation and second, that Section 5 is a reasonable regulation and would be valid even without Section 2 (c).

The Supreme Court of Texas in its opinion construed these sections as follows:

“ . . . It affects only the right of one to engage in the business as a paid organizer, and not the mere right of an individual to express his views on the merits of the union. Furthermore, it will be noted that the Act does not require a paid organizer to secure a license, but merely requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union. The Act confers no unbridled discretion on the Secretary of State to grant or withhold a registration card at his will, but makes it his mandatory duty to accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith. . . . ”

The Texas Supreme Court drew an analogy between paid labor organizers and other businesses, occupations or professions by saying:

"Many statutes have been enacted in this State which curtail or limit the right of one to operate or speak as the agent of another. For example: 'The Securities Act' (Art. 600a, Vernon's Civil Statutes) prohibits an agent from selling securities for another without a permit from the Secretary of State. Insurance agents are required to secure licenses before being permitted to sell insurance. Art. 5662a, Vernon's Civil Statutes. Railway agents are required to have a certificate of authority before being permitted to sell railway tickets. Art. 6415, Rev. Civ. Stat. 1925. A real estate broker is required to have a license before he may act as the agent for another. Art. 6573a, Vernon's Civil Statutes. Likewise, Congress has enacted a statute which requires agents of foreign governments to register with the Secretary of State before being permitted to so act. 22 U.S.C.A. Sec. 601. Numerous other illustrations could be given. None of these statutes have been held unconstitutional on the ground that they abridged the right of free speech or otherwise unnecessarily deprived a person of his liberty."

¹For other illustrations, see:

Attorneys are required to obtain licenses from the Supreme Court and to register annually with the court before they can practice law. Article 306, V.A.T.C.S.

Physicians must not only have a license but they must register annually with the Texas State Board of Medical Examiners. Article 4498a and 4504, V.A.T.C.S.

Pharmacist must be registered with the State Board of Pharmacy. Article 755, V.A.T.P.C.

Engineers must register with a State Board of Registration for Professional Engineers. Article 3271a, V.A.T.C.S.

Architects must register with the State Board of Architectural Examiners. Article 249a, V.A.T.C.S.

The Texas Supreme Court gave its version of the facts reasonably supporting the enactment of Section 5 of Article 5154a in the following language:

“That the Legislature was justified in concluding that the part of the Act here under con-

Land Surveyors must secure a license from the State Board of Examiners of Land Surveyors. Article 5271, V.A.T.C.S.

Veterinarians must not only have an annual license but they must register in the District Clerk's Office of the County in which they reside. Articles 7451 and 7461, V. A.T.C.S.

Midwives and Undertakers “or persons acting as such” must register with the district registrar of the State Department of Health. Article 4477, Rule 49a, V.A.T.C.S.

Dentists must have a license from the State Board of Dental Examiners. Article 4544 V.A.T.C.S.

Embalmers who are engaged in the business of embalming must have a license from the State Board of Embalming. Article 4578, V.A.T.C.S.

Chiropodists must register annually with the State Board of Chiropody Examiners. Article 4571, V.A.T.C.S.

Optometrists must secure a license from the Texas State Board of Examiners in Optometry and must register with the County Clerk of their County. Articles 4557 and 4561, R.C.S. of T. 1925.

Chiropractors are required to secure an annual license from the Texas Board of Chiropractic Examiners. Article 4512a, V A.T.C.S.

Cosmetologists must register with and obtain a license from the State Board of Hairdressers and Cosmetologists. Article 734b, V.A.T.P.C.

Butchers must register with the County Clerk “before engaging in the business of slaughter and sale of animals for market.” Article 1450, R. Cr. S. of T. 1925.¹

sideration was necessary for the protection of the general welfare of the public, and particularly the laboring class, can hardly be doubted. As previously stated, membership in labor unions runs into millions. Not infrequently thousands of employees work at a single plant. It is impossible for them to know each other, or to know

Funeral Directors must register and obtain a license from the State Board of Embalming. Article 4582a, V.A.T.C.S.

Druggist or Pharmacist operating a drug store or pharmacy must obtain a permit from the State Board of Pharmacy. Article 4245a, Sec. 17, V.A.T.C.S.

Pawnbrokers must file a bond with the County Clerk of the county in which they do business. Article 6147, R.C.S. of T. 1925.

Commercial College Operators must first obtain a permit from the Secretary of State. Article 1415a, V.A.T.C.S. and Article 301a, V.A.T.P.C.

Loan Brokers are required to register with the County Clerk and file a bond with the County Judge of the county in which they engage in business. Article 6165a, V.A.T.C.S.

Industrial Workers manufacturing articles or materials at home must have a permit from the State Board of Health. Article 782a, V.A.T.C.S.

Live Stock Commission Merchants must file a bond with the County Judge of the County in which they are engaged in business. Article 1287a, V.A.T.C.S.

Chain System Merchants are required to obtain a license from the County Tax Collector of the county in which such business is to be conducted. Article 7429, V.A.T.C.S.

Any person acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well or owning or controlling leases of oil and mineral rights or the transportation of oil or gas by pipe line must register with the Railroad Commission of Texas and give certain information concerning his principal. Article 6035, R.C.S. of T., 1925.

those who purport to represent the various unions. When a laborer is approached by an alleged ~~organizer~~ it is impossible for him to know whether he is an impostor or whether he has authority to represent the union which he purports to represent. Thus a great field for the perpetration of fraud both as against the laborer and

Barber and Beauty Operators cannot engage in business without a license. Articles 734a and 734b, V.A.T.P.C.

Persons Operating Day Nursery, whether for charity or revenue "shall obtain an annual license from the State Board of Health, which license shall be issued without fee." Article 4442a, V.A.T.C.S.

Operators and Chauffeurs of motor vehicles must have a license. Articles 6687a, V.A.T.C.S.

Public Warehousemen must register with and secure a certificate from the County Clerk of the county in which their warehouses are situated. Article 5569, V.A.T.C.S.

Citrus Fruit Dealers must procure a license from the Commissioner of Agriculture. Article 118b, V.A.T.C.S.

Wholesalers of Oleomargarine are required to register with the State Comptroller, giving their names and addresses and the names of their principal. Article 7057c, V.A.T.C.S.

Public Weighers must have a certificate of authority from the Commissioner of Agriculture. Article 5690, V.A.T.C.S.

Cotton Ginners must have a license from the Commissioner of Agriculture. Article 5674, V.A.T.C.S.

Public Cotton Classers must have a license issued by the Secretary of Agriculture of the United States. Article 5679a, V.A.T.C.S.

Brewers, Distillers, wholesalers or retailers of liquor or wine must obtain a permit from the State Liquor Control Board. Article 666-15, V.A.T.P.C.

Employment or Labor Agencies must obtain a license from the Commissioner of the Bureau of Labor Statistics. Article 5221a-4, V.A.T.C.S.

the union is presented. It is important to the laborer that he be able to know that the representations of the purported organizer who approaches him with a request that he join the union and pay his dues in order to be able to work on a particular job are the representations of an accredited agent of the union and that the purported representative be identified in order that pretenders under the guise of authority from the

Auctioneers are required to pay an annual occupation tax. Article 7044 (6) V.A.T.C.S.

Commercial Fishermen and fish dealers must each have a license from the Game, Fish and Oyster Commission before they can engage in their business. Article 934a, V.A.T.P.C.

A "**Contracting Stevedore**" must have a license from the County Clerk before he can pursue said occupation. Article 5194, R.C.S. of T., 1925.

Commission Merchant, Dealer, Broker or Agent, as defined in the Texas Agriculture Protective Act can not act as such without procuring a license from the Commissioner of Agriculture. Article 1287-1, V.A.T.C.S.

Oil Well Drillers must procure a permit from the Railroad Commission before they can drill an oil well in Texas. Rule 37 of the Texas Railroad Commission under authority of Article 6029, V.A.T.C.S.

Hawkers, Peddlers, Pawnbrokers, Draymen, Drivers of baggage wagons, Porters, and "all others pursuing like occupations" may be licensed by cities, town and villages. Article 1015, R. S. of T. 1925.

Candidates of political parties for nomination for State office in primary elections must file with the Secretary of State detailed statements of receipts and expenditures. Article 269, V.A.T.C.S.

Deaths and Births of persons—It is necessary to obtain a certificate from the State Department of Health when a person is born and a permit when a person is buried in Texas. Rules 38a and 46a of Article 4477, V.A.T.C.S.

union may not misrepresent the organization, nor collect and squander funds intended for its use. The law is for the protection of both the laborer and the union."

That portion of the Act here in issue was enacted in recognition of the fact that something more is done by a labor organizer than talking. He acts for an alleged principal and collects money for the principal, or if he does not actually collect fees and dues in person, he makes it possible for his principal to collect them. He purports to act for a labor union in establishing a contractual relation between the person solicited and the labor union he claims to represent. In limiting the Act to persons "who for a pecuniary or financial consideration solicits" for a labor union the legislature has defined a business or profession which is clearly subject to reasonable regulations under the State's police power.

There is no question but that paid union labor organizers are engaged in a business "affected with a public interest" in the sense in which this term was previously used to justify State regulation of an occupation or business. This Honorable Court has said that "the merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern." *Thornhill v. Alabama*, 310 U. S. at p. 103. Under recent decisions, however, this word formula has been discarded as a measure of the State's police power. In *Olsen v. Nebraska*, 313 U. S. 236, this Honorable Court held that a Ne-

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braska statute licensing private employment agencies and fixing their maximum fees was constitutional. In reference to businesses affected with a public interest, this Court said:

"It was said to be so affected if it had been 'devoted to the public use' and if 'an interest in effect' had been granted 'to the public in that use.' *Ribnik v. McBride*, supra (277 U. S. 355, 72 L. Ed. 915, 48 S. Ct. 545, 56 A.L.R. 1327). That test, labelled by Mr. Justice Holmes in his dissent in the *Tyson* case (273 U. S. at p. 446, 71 L. Ed. 729, 47 S. Ct. 426, 58 S. Ct. 1236) as 'little more than a fiction,' was discarded in *Nebia v. New York*, supra (291 U. S. pp. 531-539, 78 L. Ed. 953, 958, 54 S. Ct. 505, 89 A.L.R. 1469). It was there stated that such criteria 'are not susceptible of definition and form an unsatisfactory test of the constitutionality of legislation directed at business practices or prices,' and that the phrase 'affected with a public interest' can mean 'no more than that an industry, for adequate reason, is subject to control for the public good.' (Id. 291 U. S. p. 536, 78 L. Ed. 956, 54 S. Ct. 505, 89 A.L.R. 1469). And see the dissenting opinion in *Ribnik v. McBride*, supra (277 U. S. at p. 359, 72 L. Ed. 916, 48 S. Ct. 545, 56 A.L.R. 1327)."

In reference to the necessity for such legislation this court said:

"We are not concerned, however, with the wisdom, need, or appropriateness of the legisla-

tion. Differences of opinion on that score suggest a choice which 'should be left where . . . it was left by the Constitution—to the States and Congress.' *Ribnik v. McBride*, supra, at p. 375, dissenting opinion. There is no necessity for the State to demonstrate before us that evils persist despite the competition which attends the bargaining in this field. In final analysis, the only constitutional prohibitions or restraints which respondents have suggested for the invalidation of this legislation are those notions of public policy embedded in earlier decisions of this Court but which as Mr. Justice Holmes long admonished, should not be read into the Constitution. *Tyson & Brother v. Banton*, supra, at p. 446; *Adkins v. Children's Hospital*, supra, at p. 570. Since they do not find expression in the Constitution, we cannot give them continuing vitality as standards by which the constitutionality of the economic and social programs of the States is to be determined."

In *California v. Thompson*, 313 U.S. 109, a California statute which defined "a transportation agent as one who sells or offers to sell or negotiate for transportation over the public highways of the State" and which required "every agent to procure a license from the State Railroad Commission authorizing him so to act," was held to be constitutional.

In *Semler v. Oregon State Board of Dental Examiners*, 294 U. S. 608, an Oregon statute prohibiting dentists from advertising or "employing or making use of advertising solicitors" was held to be a constitutional exercise of the State's police power.

These cases all deal with extreme instances of State regulation. That portion of the Texas statute involved here merely requires the person affected to register and disclose the identity of himself and his principal. Where, as here, the regulation involves no more than a filing of identification papers with the Secretary of State, there can be no question of the State's power. People of the State of New York *ex rel Bryant v. Zimmermann*, 278 U. S. 63. In that case a New York statute with certain exceptions required that "every existing membership corporation, and every existing unincorporated association having a membership of twenty or more persons, which corporation or association requires an oath as a prerequisite or condition of membership . . . shall file with the Secretary of State a sworn copy of its constitution, by-laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year." The statute also made it a misdemeanor for a person to become or remain a member or attend a meeting of such a corporation or association with knowledge that it had failed to comply with the regulation above quoted. In upholding the validity of this statute against attacks on its constitutionality such as those involved here, this Honorable Court said:

"The relator's contention under the due process clause is that the statute deprives him of liberty in that it prevents him from exercising his right of membership in the association. But his liberty in this regard, like most other personal

rights, must yield to the rightful exertion of the police power. There can be no doubt that under that power the State may prescribe and apply to associations having an oath-bound membership any reasonable regulation calculated to confine their purposes and activities within limits which are consistent with the rights of others and the public welfare. The requirement in Sec. 53 that each association shall file with the Secretary of State a sworn copy of its constitution, oath of membership, etc., with a list of members and officers is such a regulation. It proceeds on the two-fold theory that the State within whose territory and under whose protection the association exists is entitled to be informed of its nature and purpose, of whom it is composed and by whom its activities are conducted, and that requiring this information to be supplied for the public files will operate as an effective or substantial deterrent from the violations of public and private right to which the association might be tempted if such a disclosure were not required. The requirement is not arbitrary or oppressive, but reasonable and likely to be of real effect. Of course, power to require the disclosure includes authority to prevent individual members of an association which has failed to comply from attending meetings or retaining membership with knowledge of its default. We conclude that the due process clause is not violated."

Our alternative position is that Section 5 would be a constitutional regulation even though it applied to all labor union organizers, the voluntary as well as the paid organizers. The question here is not unlike that involved in State statutes regulating cer-

tain phases of interstate commerce. For instance, a State law which requires non-resident motorists to secure a certificate of registration from the Commissioner of Motor Vehicles before they are entitled to use the public highways of the State, is a constitutional regulation. *Hendrick v. Maryland*, 235 U. S. 610. Also, the California Caravan Act of 1937, which required all persons, driving an automobile into the State for the purpose of sale either on its own power or in tow of another automobile, to obtain a six months' permit at a cost of \$15.00 for each car, was held not to be an undue burden on interstate commerce. *Clark v. Paul Gray, Inc.*, 306 U. S. 583. A still stronger case is *California v. Thompson*, 313 U. S. 109, where a California statute defining a transportation agent as "one who sells or offers to sell or negotiate for" transportation over the public highways of the State and requiring each such agent to procure a license from and file a bond with the State Railroad Commission, was held to be constitutional even "when applied to one who negotiates for the transportation interstate of passengers over the public highways of the State" The analogy is that interstate commerce like freedom of religion, speech and press is protected from undue burdens imposed by the States, yet the States still have authority to impose regulations which are reasonable in relation to the subject.

1-a. The statute as enacted and as applied does not abridge freedom of speech.

Since the decision of this Honorable Court in *Car-*

penters and Joiners Union v. Ritters Cafe, 315 U. S. 672 it has been settled that the freedom of speech even of a labor union and its agents is not "completely inviolable." The limitation on free utterance there (peaceful picketing) was imposed by a Texas Court by means of an injunction, but in gauging an infringement of the guaranties announced in the First Amendment, which are made applicable to the States through the Fourteenth Amendment, a State court would have no priority over a State Legislature. *Milk Wagon Drivers Union v. Meadowbrook Dairies*, 312 U. S. 287, 297.

The Supreme Court of Texas in the present case further held that:

"In our opinion, the Act imposes no previous general restraint upon the right of free speech. It does not impose a general restraint on the right to solicit others to join the union, nor does it vest unlimited discretionary power in the Secretary of State to grant or refuse a registration card to any one qualified under the Act to solicit members for the unions. It merely requires paid organizers to register with the Secretary of State before beginning to operate as such."

The construction of a State statute by the highest court of the State is binding on this Honorable Court. *Prince v. Commonwealth of Massachusetts*, 88 L. Ed. (Adv. Sheets) at p. 406.

It will be noted that Section 5 imposes no tax. The organizer's cards are issued without cost to any labor

organizer who comes within and who complies with the terms of the statute. Therefore the cases of *Grosjean v. American Press Co.*, 297 U. S. 233; *Jones v. Opelika*, 319 U. S. 103; *Murdock v. Pennsylvania*, 319 U. S. 105 and *Follett v. Town of McCormick*, S. C. (opinion delivered March 27, 1944) and similar tax cases are not in point.

Under the construction given this section of the Act by the Supreme Court of Texas there is no question of censorship or previous restraint involved. Therefore the cases of *Lovell v. City of Griffin*, 303 U. S. 444; *Hague v. Committee for Industrial Organizations*, 307 U. S. 496; *Near v. Minnesota*, 283 U. S. 697; *Schneider v. State of New Jersey*, *Town of Irving*, 308 U. S. 147; *Cantwell v. Connecticut*, 310 U. S. 296; *Thornhill v. Alabama*, 310 U. S. 88; *Martin v. Struthers*, 319 U. S. 141, and similar cases involving either a censorship or a previous restraint that "limits the dissemination of knowledge" are not in point. Section 5 of the Act in controversy as construed by the highest court in Texas is regulatory and not prohibitory and in this respect is in the same class as the regulations whose constitutionality were upheld in *City of Manchester v. Leiby*, (1 cir.) 117 Fed. (2) 661, certiorari denied; 313 U. S. 562 and *Cox v. New Hampshire*, 312 U. S. 569.

In addition to the construction by the Supreme Court of Texas that this statute conferred ministerial and not discretionary powers on the Texas Secretary of State, the Secretary as a witness in the trial court testified that 223 cards had already been is-

sued to labor organizers who had applied therefor. R. 14. He also testified that applications had been returned to various persons who had failed to properly fill out the form and thereby comply with the statute but that no applications had been denied. R. 14.

A printed form of the application issued for the use of applicants by the Secretary of State and the Policies of the State Department are set out on pages 46, 47, 72-75 of the Record.

There is no evidence that Section 5 of the statute has been or ever will be used as an excuse to prevent the free dissemination of ideas by labor union organizers in Texas. It is a registration statute and nothing more. We see no reason why a labor organizer, like Mr. Thomas, more than any other bona fide sales agent, should object to identifying himself and his principal when he enters Texas to conduct his business.

The appellant will contend that a labor union is "a voluntary, unincorporated association not organized for profit."¹ The absence of a "profit motive" is urged as a basis for protecting labor unions in the exercise of "the freedom of speech" in the same way as Jehovah's Witnesses are protected in the "free exercise of religion." *Murdock v. Pennsylvania*, supra; *Follett v. Town of McCormick*, S. C. supra. How-

¹See *Valentine v. Chrestensen*, 316 U. S. 52, holding that where motives are mixed the Court will not undertake to classify the activity as non-commercial.

ever, there is a fundamental difference between the "free exercise of religion" as practiced by Jehovah's Witnesses and "freedom of speech" as enjoyed by labor organizers. The "Witnesses" engage in door to door canvassing and solicitations as a religious rite. "This form of evangelism is utilized today on a large scale by various religious sects whose colporteurs carry this Gospel to thousands upon thousands of homes and seek through personal visitation to win adherents to their faith. It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendments as do worship in churches and preaching from pulpits." *Murdock v. Pennsylvania*, 319 U. S. pp. 108, 109. The tax ordinance in the *Murdock* case was a burden upon the exercise of religion itself and because of the relationship between the tax and the subject matter, it was held in effect that the tax was an undue burden and violated the guaranty of "the free exercise of religion."

The labor organizer, on the other hand, enjoys freedom of speech as an incident to other activities. It is not with him an end but rather a means to an end. The appellant is not a "witness" for the C.I.O. in the same sense as the others are "Witnesses" for Jehovah. It may be true that labor unions do not declare dividends and have no invested capital on which they expect a six percent return. But the objectives of the union are primarily economic. Lack of a cor-

porate form cannot serve to make their activities fraternal and philanthropic as distinguished from commercial. The union like the employer is an industrial combatant whose right "to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist." *Thornhill v. Alabama*, 310 U. S. 88, 103, 104. When a labor union undertakes to solicit new members through a labor organizer, whether paid or voluntary, it is engaging in a business activity which has no higher purpose than the strengthening of its own economic power through which its members hope to realize larger pay checks and better working conditions for themselves. The union, of course, speaks only through its agents but these agents cannot claim immunity from regulation when the business which they serve is itself subject to regulation. *People of the State of New York ex rel Bryant v. Zimmerman*, 278 U. S. 63. When, however, an organizer solicits "for a pecuniary or financial consideration," he thereby engages in a business or profession in his own right and is subject to reasonable State regulations without reference to the nature of the activity in which his principal is engaged.

It is our view that Section 5 of the Act in controversy would be valid even if it applied to Jehovah's Witnesses. *Cox v. New Hampshire*, 312 U. S. 569; *City of Manchester v. Leiby*, (1 cir.) 117 Fed. (2) 661, certiorari denied; *Chaplinsky v. New Hampshire*, 315 U. S. 568; *Cantwell v. Connecticut*, 310 U. S. 296, 304, 306. In the last mentioned case this Hon-

orable Court said:

"Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may not be at some slight inconvenience in order that the State may protect its citizens from injury. Without doubt a State may protect its citizens from fraudulent solicitation by requiring a ~~stranger~~ stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent."

We mention the difference in labor organizers and and Jehovah's Witnesses only in reply to appellant's argument.

1-b. The statute as enacted and as applied does not deny appellant equal protection of the laws.

The only question under the equal protection of the law provision is whether or not the classification of paid labor organizers has a reasonable basis in fact and is not arbitrary.

The due process clause of the Fourteenth Amendment admits of the exercise of a wide scope of discretion in regard to the State's power to classify in the adoption of police laws and "one who assails the classification in such a law must carry the burden of showing it does not rest upon any reasonable basis.

but is essentially arbitrary." "If any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed." *Lindsley v. National Carbonic Gas Co.*, 220 U. S. 61, 78, 83.

This court has held that a New York law similar to the Act involved here, which applied to the Ku Klux Klan, "a voluntary unincorporated association not organized for profit" and not to labor unions, was constitutional. *People of the State of New York ex rel Bryant v. Zimmerman*, 278 U. S. 63.

This court has more recently held that the Texas anti-trust law, which excludes combinations of farmers and stockmen and includes all others, was constitutional. *Tigner v. Texas*, 310 U. S. 141.

In *Williams v. Arkansas*, 217 U. S. 79, it was held that a state statute forbidding drumming or soliciting on trains for any "hotels, lodging houses, eating houses, bath houses, physicians, masseurs, surgeons or other medical practitioners," was not unconstitutional because it did not apply to the "commercial drummer."

In *Semler v. Oregon State Board of Dental Examiners*, 294 U. S. 608, 610, it was held that a State statute prohibiting dentists from advertising or "employing or making use of advertising-solicitors" was not unconstitutional because it was limited to dentists and did not extend to other professional classes.

In *Watson v. Maryland*, 218 U. S. 173, 178, it was held that a registration statute for physicians was not unconstitutional because it applied only to paid physicians and not those engaged in "gratuitous services."

1-c. The statute as enacted and as applied does not impose an undue burden on interstate commerce.

The appellant further challenges that part of the Texas statute in controversy as creating an undue burden on interstate commerce. This contention is, of course, an implied admission that appellant and his principal are engaged in business which operates by means of interstate transactions, for otherwise there would be nothing on which the State regulation could impose a burden. However, this point, in our opinion, is too far-fetched to require argument. *California v. Thompson*, 313 U. S. 109. *Hendrick v. Maryland*, 235 U. S. 610, 622-624.

1-d. The statute as enacted and as applied does not cover a field which is pre-empted by Federal Laws.

The appellant further contends that the Federal Government has by the passage of the Railroad Labor Act and the National Labor Relations Act and other laws pre-empted the field covered by Article 5154a, Vernon's Annotated Texas Civil Statutes, to such an extent that a registration provision such as Section 5 is rendered inoperative. Similar contentions were overruled in *Allen-Bradley Local v. Wis-*

consin Employment Relations Board, 315 U. S. 740, 748-751, and *Terminal Ry. Association of St. L. v. Brotherhood of R. R. Traimen*, 318 U. S. 1.

Counter Point No. 2

Section 4a of the Texas law, which denies aliens and felons the right to serve as labor organizers as defined in the Act, is severable under Section 15 from the remainder of the Act, and the decision of the Supreme Court of Texas on the question of severability is conclusive on this court.

In the Supreme Court appellant made the same contentions with reference to invalidity of Section 4a¹ and its consequent effect on the validity of Section 5, as are being urged here. R. 313. The Supreme Court of Texas did not in its opinion mention Section 4a but it did copy Section 15, the severability clause of the Act and held Section 5 to be constitutional. The effect of its holding was to overrule appellant's contention and hold that Section 4a, even though invalid, was severable from Section 5 and did not affect its validity. This construction by the highest court of a State of its own laws is binding on this Honorable Court.

¹Section 4a, Article 5154a, V.A.T.C.S. reads: "It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored."

In *Dorchy v. Kansas*, 264 U. S. 287, 290 this Court said:

"The task of determining the intention of the state legislature in this respect, like the usual function of interpreting a state statute, rests primarily upon the state court. Its decision as to the severability of a provision is conclusive upon this Court. *Gatewood v. North Carolina*, 203 U. S. 531, 543; *Guinn v. United States*, 238 U. S. 347, 366; *Schneider Granite Co. v. Gast Realty Co.*, 245 U. S. 388, 290."

See, also, the recent holding in *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, 747, 748 which involved the constitutionality of only a part of the *Wisconsin Employment Peace Act*, and *Truax v. Corrigan*, 257 U. S. 312, 341-342.

In an opinion rendered before the present case arose the Attorney General of Texas ruled that Section 4, 7 and 10a of the law in controversy were unconstitutional, but that these sections were severable and did not affect the validity of the balance of the Act. R. 78.

It is true that if Section 4a is held to be unconstitutional, aliens and felons may become labor organizers and will be eligible to apply for an organizer's card under Section 5 of the Act. But there is no question about the legislative intent in such a contingency. The Legislature has declared in Section 15 that "such invalidity shall not affect the remaining portions thereof, it being the express intention

of the Legislature to enact such act without respect to such section or part so held to be invalid" There is every reason for giving effect to this language if the invalid portion is Section 4a, because the purpose to be served by a registration statute would apply more strongly in the case of aliens and felons than with paid labor organizers who have the privileges and responsibilities of citizenship.

Furthermore, appellant Thomas testified that he was born in Ohio (R. 22) and he has not shown that he is hurt in any way by the prohibition against aliens and felons. Only those whose rights are directly affected can properly question the constitutionality of a state statute and invoke the jurisdiction of this court in regard thereto. *Hendrick v. Maryland*, 235 U. S. 610, 621. In an appeal from a State court denying appellant's release on a writ of habeas corpus from a judgment for contempt, this court will dismiss the appeal if there is any ground on which the contempt judgment may be sustained. *Howat v. Kansas*, 258 U. S. 181.

Counter Point No. 3

Section 4a of the Texas Act which denies to aliens and felons the right to serve as labor organizers as defined in the Act, is constitutional.

Although a statute which arbitrarily forbids aliens to engage in ordinary kinds of business to earn their living would be unconstitutional, *Yick Wo. v. Hopkins*, 118 U. S. 356; *Truax v. Raich*, 239

U. S. 33, the State in the exercise of its police power may limit to its citizens and deny to aliens and felons an occupation which though lawful is subject to abuse and likely to become injurious to the community.

The following occupations have been judicially determined to be of this class: *Auctioneer*, Wright v. May, 127 Minn. 150, 149 N.W. 9, L. R. A. 1915B, 151; *pawnbroker*, Asakura v. Seattle, 122 Wash. 81, 210 Pac. 30, reversed in 265 U. S. 332, 68 L. Ed. 1041, 44 S. Ct. 515, upon the ground that the ordinance violated the treaty between the United States and Japan; *pool and billiard room operator*, Ohio ex rel. Clarke v. Deckebach, 274 U. S. 392; State ex rel. Balli v. Carrel, 99 Ohio St. 285, 124 N. E. 129; Anton v. Van Winkle, 297 Fed. 340; pilot, State v. Ames, 47 Wash. 328, 92 Pac. 137; *liquor dealer*, Trageser v. Gray, 73 Ed. 250, 9 L. R. A. 780, 25 Am. St. Rep. 587, 20 Atl. 905; Bloomfield v. State, 86 Ohio St. 253, 41 L. R. A. (N. S.) 726, 99 N. E. 309, Ann. Cas. 1913D 629; also, De Grazier v. Stephens, 101 Tex. 194, 105 S. W. 992, 16 L. R. A. (N.S.) 1033; *peddler*, Commonwealth v. Hana, 195 Mass. 262, 122 Am. St. Rep. 251, 11 L.R.A. (NS) 799, 81 N. E. 149; *Employee on public works*, Crane v. New York, 239 U.S. 195; *lawyer*, State v. Estes 130 Tex. 425; 109 S. W. (2d) 167; Hong Yen Chang, 84 Cal. 163, 24 Pac. 156; Templar v. State Examiners 131 Mich. 254, 100 Am. St. Rep. 610, 90 N. W. 1058; Re O'Neill, 90 N. Y. 584; *farmer-landholder*, Terrace v. Thompson, 263 U. S. 197, 68 L. Ed. 255, 263 S. Ct. 197; Porterfield v. Webb, 263 U. S. 225, 68 L. Ed. 278, 263 St. Ct. 223; Webb v. O'Brien, 263 U. S. 313, 68 L. Ed.

318, 263 S. Ct. 313; Frick v. Webb, 263 U. S. 326, 68 L. Ed. 323, 263 S. Ct. 326.

The appellant testified on the contempt hearing that increased political activity in the State of Texas was one of the objectives of his union and the C.I.O. (R. 43, 44). Organizers for any group whose objective it is to affect the political life of the State occupy a position which could easily be used to foment trouble in the community. "It is not unreasonable to suppose that the foreign born, whose allegiance is first to their own countries, and whose ideals of governmental environment and control have been engendered and formed under entirely different regimes and political systems, have not the same inspiration for the public weal, and are not as well disposed toward the United States as those who, by citizenship, are a part of the Government itself." 2 Am. Jur. Sec. 13 p. 470. The Legislature of Texas as evidenced by the Act in question obviously thought this was true and on this basis limited the business or profession of "labor organizer" to those who enjoy the privileges and responsibilities of citizenship. The Legislature found in the preamble of the Act that "because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organization affect the public interest and are charged with a public use." Section 1, Article 5154a, Vernon's Annotated Texas Civil Statutes. The appellant has not met and overcome the burden cast on him of showing that this

classification has no reasonable basis in fact and is arbitrary. *Terrace v. Thompson*, 263 U. S. 197, *Crane v. New York*, 239 U. S. 195, *Porterfield v. Webb*, 263 U. S. 225, *Ohio ex rel. Clarke v. Deckebach*, 274 U. S. 392, *Trageser v. Gray*, 73 Md. 250, 20 A. 905, 9 L. R. A. 780, 25 Am. St. Rep. 587, *Commonwealth v. Hana* (Mass.) 81 N. E. 149.

WHEREFORE, appellee prays that this appeal be dismissed or in the alternative that the judgment of the Supreme Court of Texas be affirmed.

GROVER SELLERS

Attorney General of Texas

Fagan Dickson

FAGAN DICKSON

Assistant Attorney General

Attorneys for H. M. Collins,
Sheriff of Travis County,
Texas, Appellee.

A copy of this brief has been mailed to Mr. Ernest Goodman, 3220 Barlum Tower, Detroit 26, Michigan; Messrs. Lee Pressman and Eugene Cotton, 718 Jackson Place, N.W. Washington, D. C.; and Messrs. Arthur J. Mandell and Herman Wright, Fifth Floor, State National Bank Building, Houston, Texas, Attorneys for R. J. Thomas, Appellant.

NO. [REDACTED]

11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

R. J. THOMAS

Appellant

v

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,
Appellee

Appeal from the Supreme Court of Texas

APPELLEE'S MOTION FOR ORDER REQUIR- ING APPELLANT TO GIVE RECOGNIZANCE

GROVER SELLERS

Attorney General of Texas

FAGAN DICKSON

Assistant Attorney General

Attorneys for Appellee.

NO. 569

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

R. J. THOMAS

Appellant

v

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,
Appellee

Appeal from the Supreme Court of Texas

**APPELLEE'S MOTION FOR ORDER REQUIR-
ING APPELLANT TO GIVE RECOGNIZANCE**

*To the Honorable the Supreme Court of
the United States:*

Now comes Appellee and moves the Court to require Appellant to execute and file with this Court a recognizance with a personal surety residing in the State of Texas or corporate surety lawfully do-

ing business in Texas, payable to the State of Texas, in such sum as the Court may think proper, obligating himself to obey the orders of this Court and the judgments rendered by the courts below, in so far as they are not set aside or modified by the orders of this Court, and for special grounds shows:

1. The Supreme Court of Texas has required no recognizance pending this appeal.

The Supreme Court has permitted Appellant to Appeal to this Court upon a \$500.00 cost bond, which is conditioned only for the securing of costs on appeal. R. 341. Clerk's Transcript p. 8

2. The \$1,000 bail bond given to the State of Texas by Appellant on September 25, 1943, is wholly inadequate.

This \$1,000 bail bond is on file with the District Clerk of Travis County, Texas. Neither this bail bond nor a copy thereof was filed in the Supreme Court of Texas. A certified copy thereof is being herewith presented to the Clerk of this Court together with a motion that it be ordered filed. It is the only recognizance which appellant has given in this case. The appellee is of the opinion that appellant has no intention of serving his jail sentence in the event the contempt judgment is affirmed. Appellant has testified in this case that he is President of "the largest labor union in the world" (R. 284) which has approximately one million members and Vice-President of the C. I. O. which has approxi-

mately five million members. R. 23. A bond of a \$1,000 is wholly inadequate to secure compliance with the orders of the Court and an additional bond will not work an undue hardship on appellant.

3. The Appellant has left Texas and the Courts of Texas are powerless to enforce their orders in regard to his person.

Immediately after his release from jail on September 25, 1943, the Appellant left Texas and so far as Appellee or his counsel have been able to ascertain, he has not been back since. He is at present at large outside of Texas and this Appellee is without power to carry out the orders and decree of the Fifty-third District Court of Travis County, Texas, and the Supreme Court of Texas with reference to his incarceration, should the judgments of these courts be affirmed. The Governor of Texas does not grant or request extradition of any individual for any offense less than a felony. The appellant is a resident of Detroit, Michigan. R. 22.

4. The term of the Supreme Court of Texas during which judgment was rendered in this case expired on December 31, 1943.

Article V, Section 3a, of the Texas Constitution provides, "The Supreme Court may sit at any time during the year at the seat of Government for the transaction of business and each term thereof shall begin and end with each calendar year." The judgment in this case was rendered by the Supreme Court

of Texas on October 27, 1943 (R. 326) and the Motion for Rehearing was overruled on November 24, 1943. R. 335. The Supreme Court of Texas therefore no longer has jurisdiction in the case and cannot correct its mistake in not requiring Appellant to file a recognizance pending appeal.

WHEREFORE, Appellee prays that prior to any disposition of this appeal, this Honorable Court enter an order requiring Appellant to give a bond with personal surety residing in Texas or corporate surety lawfully doing business in Texas, payable to the State of Texas, in such sum as this Court may think proper, conditioned that he will obey the orders of this Court and unless modified or set aside, the orders of the Supreme Court of Texas and the Fifty-third District Court of Travis County, Texas, with reference to his incarceration.

Respectfully submitted,

GROVER SELLERS

Attorney General of Texas

FAGAN DICKSON

Assistant Attorney General

Attorneys for Appellee.

A copy of this Motion has been mailed to Mr. Ernest Goodman, 3220 Barlum Tower, Detroit 26, Michigan; Messrs. Lee Pressman and Eugene Cotton, 718 Jackson Place, N. W. Washington, D.C.; and

Messrs. Arthur J. Mandell and Herman Wright,
Fifth Floor, State National Bank Building, Houston,
Texas, Attorneys for R. J. Thomas, Appellant.

STATE OF TEXAS)
COUNTY OF TRAVIS)

BEFORE ME, a Notary Public in and for Travis
County, Texas, on this day personally appeared Fa-
gan Dickson, who being duly sworn, states on his
oath that he is an Assistant Attorney General of the
State of Texas and is authorized to make this af-
fidavit; that he is cognizant of the facts stated in the
foregoing motion and that they are true and correct.

SWORN TO AND SUBSCRIBED BEFORE ME,

this day of April, 1944.

Notary Public in and for
Travis County, Texas

MAY 1 1944

NO. **14**

14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

R. J. THOMAS,

Appellant

v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,
Appellee

Appeal from the Supreme Court of Texas

APPELLEE'S MOTION TO FILE AMENDED TRANSCRIPT

GROVER SELLERS

Attorney General of Texas

FAGAN DICKSON

Assistant Attorney General

Attorneys for Appellee

NO. 569

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

R. J. THOMAS,

Appellant

v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,
Appellee

Appeal from the Supreme Court of Texas

APPELLEE'S MOTION TO FILE AMENDED TRANSCRIPT

*To the Honorable the Supreme Court of
the United States:*

Now comes Appellee and moves the Court for permission to file an amended Transcript showing copy of bail bond given by Appellant to the State of Texas

on the 25th of September, 1943, and for grounds shows:

This Appellee and his counsel, the Attorney General of Texas, were not furnished a copy of the Record in this case until April 21, 1944, and did not know until that date that there was no bond or copy of bond in this court or the Supreme Court of Texas granting Appellant bail pending the appeal.

The praecipe for transcript of record filed with the Clerk of the Supreme Court of Texas and served on Appellee's attorneys requested as Item No. 8 the inclusion of copy of "the bond on appeal for costs and supersedeas and approval thereof." The appellee had assumed from this request that the Supreme Court of Texas had required appellant to file a recognizance pending this appeal. The bail bond, certified copy of which is presented herewith, is the only recognizance which has been filed by appellant in any court in this case.

WHEREFORE, Appellee prays that the Supplemental Transcript tendered herewith be ordered filed.

Respectfully submitted,

GROVER SELLERS

Attorney General of Texas

FAGAN DICKSON

Assistant Attorney General
Attorneys for Appellee

A copy of this Motion has been mailed to Mr. Ernest Goodman, 3220 Barlum Tower, Detroit 26, Michigan; Messrs. Lee Pressman and Eugene Cotton, 718 Jackson Place, N. W., Washington, D. C.; and Messrs. Arthur J. Mandell and Herman Wright, Fifth Floor, State National Bank Building, Houston, Texas, Attorneys for R. J. Thomas, Appellant.

NO. [REDACTED] 14

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943

R. J. THOMAS,
Appellant
v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,
Appellee

Appeal from the Supreme Court of Texas

**APPELLEE'S REPLY TO BRIEF FOR
APPELLANT**

GROVER SELLERS
Attorney General of Texas
FAGAN DICKSON
Assistant Attorney General
Attorneys for Appellee.

NO. 569

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

R. J. THOMAS,

Appellant

v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,
Appellee

Appeal from the Supreme Court of Texas

APPELLEE'S REPLY TO BRIEF FOR APPELLANT

*To the Honorable The Supreme Court of the
United States:*

REPLY TO QUESTIONS OF FACT

The appellant in his brief makes several statements of fact and some mixed statements of fact and

law, which are not supported by the record. The two points which we mention in particular are: First, that appellant is being prosecuted for the crime of speech making and second, that he was not a paid labor organizer. As to the first point, appellant at page 12 of his brief says:

"There is no issue but that the full and complete extent of the forbidden activities of the Plaintiff was the making of a speech. There is no issue as to the fact that the making of this speech was the only act in which Appellant engaged and for which it is the State's contention that he was required to have a license."

Appellant at Page 38 further says:

"The statute in the present case prohibited Appellant from making his speech without a license at any time or under any circumstances."

The verified motion for contempt alleges appellant's violation of the temporary restraining order as follows:

"That on the 23rd day of September, 1943, at the City Hall in Pelly, Harris County, Texas, the said R. J. Thomas, without procuring an organizer's card as required by law of labor organizers and without making application to the Secretary of State for such a card, did at said time and place solicit Pat O'Sullivan, a resident of Bay Town, Texas, and an employee of the Humble Oil & Refining Company's plant at Bay Town to join a local union of the Oil Workers

International Union, which said union is affiliated with the Congress of Industrial Organizations of which said R. J. Thomas is Vice-President. The said O'Sullivan at said time was not a member of the local union of the Oil Workers International Union and said R. J. Thomas then and there did take his application to become a member, all in violation of this Court's order and the writ of temporary restraining order issued pursuant thereto." R. 297.

The testimony at the contempt hearing showed without dispute that this allegation was true and that appellant's solicitation of Pat O'Sullivan took place after appellant had completed his speech at Pelly, Texas, on September 23, 1943, but before the crowd had actually disbursed. R. 4, 5, 6. The solicitation of Pat O'Sullivan does not appear in the typewritten speech (R. 279-290), but was apparently an impromptu performance on the part of appellant after he had finished his prepared speech. R. 40, 41, 44. The right of appellant to make the speech at Pelly, Texas, which is copied in the record, is not an issue in this case. It was his act of solicitation of Pat O'Sullivan after he had finished with his speech that constituted a violation of the temporary restraining order.

Second, the appellant at page 4 of his brief has said:

"Appellant is paid a salary for his work as President of UAW, and serves as vice-president of the CIO without salary."

Appellant at Page 27 further says:

"He received no fee or salary from the Oil Workers International Union. . . . His solicitation of membership for the Oil Workers Union was an act of fraternal assistance rendered in the interest of trade unionism generally."

These statements may be true but there is no evidence in the record to support them. The Attorney General alleged in his petition for temporary restraining order and in his motion for contempt that appellant was a paid labor organizer. R. 292, 296. The District Court in its judgment for contempt found that "the defendant R. J. Thomas was on the 23rd day of September, A. D. 1943, a labor organizer for a pecuniary consideration." R. 308. The Supreme Court of Texas recites in its opinion that "Relator's counsel in his argument before this court conceded the existence of the necessary factual basis for the judgment in the contempt proceedings." R. 320.

The present appeal constitutes a collateral attack on the contempt judgment. The finding that appellant was a "labor organizer" within the meaning of that term as used in the Texas Statute cannot be reviewed in this hearing. *Ex parte Lipscomb*, 111 Tex. 409, 239 S. W. 1101. Furthermore, the record contains ample evidence to support this fact finding. R. 26-28, 30, 33, 36, 41, 44, 289, 290. There is no evidence to the contrary and nothing in the record to support the statements that appellant "serves as Vice-President of the C. I. O. without salary," and that appellant "received no fee or salary from the Oil Workers International Union."

The appellant at page 6 of his brief also states that "appellant did not sign up any workers as members of the union." There is no evidence in the record to support this statement.

REPLY TO QUESTIONS OF LAW

We feel that the authorities cited in our original brief sufficiently support the judgment of the court below, but we make this short observation in reply to appellant's argument.

Appellant seems to assume as basis for his argument that labor unions as such are comparable to a religious sect or congregation whose primary objective is to engage in "the free exercise of religion." He states time and again in his brief that the final goal of a labor union is "for the better effectation of civil rights" on behalf of its members. This, of course, is not true. This Court knows of its own knowledge that labor unions exist only for the purpose of improving the economic status of its members. They grow as organizations in proportion to their ability to increase the size of their members' pocket books. A labor union does not exist for the purpose of enabling its members to exercise their rights of free speech. Employees generally exercise the freedoms of speech, press and assembly without belonging to a labor union. It is true that in forming and fostering a labor union it is necessary that the organizers speak and write, but the organization when formed is something entirely different from

the exercise of the freedoms of speech, press and assembly by its members. Labor unions, contrary to the advice of many of the friends of labor, have consistently refused to incorporate and function as a legal entity. Texas laws authorize labor unions to incorporate. Article 1302 (83), Vernon's Annotated Civil Statutes. It is our view that without incorporation a labor union as such is not a "person" within the meaning of the Fourteenth Amendment and has no civil rights. *Grosjean v. American Press Co.*, 297 U. S. 233, 244; see, Justice Black's dissent in *Conn. General Ins. Co. v. Johnson*, 303 U. S. 85-90. The labor union, however, as an unincorporated association does engage in business. It is a business which the State may regulate in the public interest. The Legislature in passing such regulations need not look for "grave and immediate danger" to the public welfare but such legislation is valid if there is a "rational basis" for the State's action.

We make the foregoing observations in response to the argument on pages 45 and 51 of appellant's brief. We do not think, however, that the determination of these questions is controlling in this case. The appellant as a paid labor organizer was himself engaged in a business or occupation that is subject to reasonable regulation under the State's police power. But in any event the particular section of the Texas law involved here is nothing more than a registration statute, which is regulatory and not prohibitory. Section 5 of the Statute is a proper exercise of the State's police power even though we assume that neither paid labor organizers nor a labor union is engaged

in business and that a labor union exists for the sole and only purpose of better effectuating the civil rights of free speech on the part of its members.

WHEREFORE, appellee prays that the appeal be dismissed, or in the alternative that the judgment below be affirmed and that costs be adjudged against appellant.

Respectfully submitted,

GROVER SELLERS

Attorney General of Texas

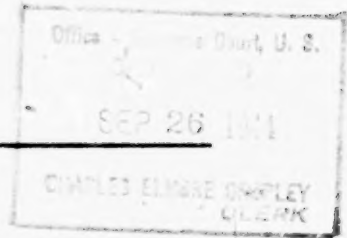
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A copy of this brief has been mailed to Mr. Ernest Goodman, 3220 Barlum Tower, Detroit, 26, Michigan; Messrs. Lee Pressman and Eugene Cotton, 718 Jackson Place, N. W. Washington, D. C.; and Messrs. Arthur J. Mandell and Herman Wright, Fifth Floor State National Bank Building, Houston, Texas, Attorneys for R. J. Thomas, Appellant.

FILE COPY



No. 14

IN THE

Supreme Court of the United States

October Term, 1944

R. J. THOMAS,

Appellant

v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,
Appellee

Appeal from the Supreme Court of Texas

**BRIEF OF APPELLEE ON QUESTIONS PROPOUNDED
FOR REARGUMENT**

GROVER SELLERS

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**BRIEF OF APPELLEE ON QUESTIONS PROPOUNDED
FOR REARGUMENT**

In addition to the brief that Appellee heretofore filed in this case as cause No. 569 at the last term of court, Appellee herewith submits this brief covering

each of the six questions propounded by the Court to counsel for discussion on the reargument of this case.

QUESTION NO. 1:

“Does the Texas Act, by judicial or administrative construction, require a registration or license before making the speech made by Thomas—if it had omitted the O’Sullivan solicitation?”

COMMENT:

The Act in question, (Section 5 of Article 5154a, Vernon’s Annotated Texas Civil Statutes) does not prohibit speech making as such. It prohibits a paid labor organizer who has not registered with the Secretary of State from “soliciting any members for his organization.” It is the solicitation without registration that constitutes the offense defined in the Act. The Act, of course, applies even though a speech may be the vehicle of solicitation. This does not mean that the statute prohibits a general speech in favor of joining a union. The Act prohibits only definite solicitation before registration. If such definite, specific solicitation takes place even in the course of a speech, the Act is violated.

It is our view that Section 5 of the Act has not been enlarged or extended by administrative or judicial construction. The administrative construction is set forth in paragraphs 9 and 10 of an instrument entitled Policies of State Department Admin-

istration of House Bill 100, 48th Legislature, which appears in the record as Defendant's Exhibit No. 1 (R. 13, 74). This construction of Section 5 of the Act goes no farther than the statute itself.

The judicial construction given Section 5 of the Act by the Supreme Court of Texas and the District Court of Travis County in this case does not extend or enlarge the statute. The Supreme Court of Texas did not enlarge the statute by judicial construction. In its opinion that court said:

"Relator's counsel in his argument before this court conceded the existence of the necessary factual basis for the judgment in the contempt proceedings. His only contention is that said Section 5 of the Act violates the provisions of Article I, Section 8, of the State Constitution, Vernon's Ann. St. which prohibits the enactment of any law abridging or curtailing the right of freedom of speech, and Article XIV, Section 1, of the Federal Constitution, which prohibits a state from enacting any law abridging the privileges and immunities of a citizen of the United States or depriving any person of his liberty." *Ex Parte Thomas*, 141 Tex. 591, 174 S. W. (2d) 958, 960.

There is no way to determine from this record that the District Court considered the Thomas speech a violation of the temporary restraining order. The speech was introduced in evidence by appellant. (R. 41,279). The hearing in the District Court was "on the application of the plaintiff for a temporary injunction" (R. 45) as well as "on motion for con-

tempt." (R. 1). The temporary injunction was granted simultaneously with the judgment for contempt and on the same record. (R. 303, 308). Neither of these order was appealed from (See Ex. parte, Travis 123 Tex. 480, 73 S. W. (2d) 487, *Harbison v. McMurray*, 138 Tex. 192, 158 S. W. (2d) 284), but the entire record was nevertheless filed in the Supreme Court of Texas in a collateral attack on on the judgment for contempt.

It is true that the motion for contempt sets out the acts of appellant, which were alleged to be in violation of the Court's order, in two separately numbered paragraphs. (R. 297, 298). The judgment in contempt, however, is a general judgment of guilty. (R. 308, 309). In a habeas corpus proceeding under such a record the judgment of guilty is referable to the first paragraph of the complaint (R. 297) alleging the O'Sullivan solicitation, which appellant himself admitted was a violation of the statute (R. 41) and the second paragraph alleging the Thomas speech will be disregarded, if it is considered to be defective. *Dimmick v. Tompkins*, 194 U. S. 540, 551, *Snyder v. United States*, 112 U. S. 216, *Claassen v. United States*, 142 U. S. 140, 146, 147. *Tinsley v. Anderson*, 171 U. S. 101, 107.

But if we assume that the judgment in contempt rests on the Thomas speech, we still say that it is a valid judgment. In *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469, this court had before it the same question. The company

there contended that the Board's findings that certain utterances constituted an unfair labor practice violated its rights guaranteed by the First Amendment. This Court said:

"The mere fact that language merges into a course of conduct does not put the whole course without the range of otherwise applicable administrative power." 314 U. S. p. 478.

In *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 437, 438, this Court said:

"But whatever the requirements of the particular jurisdiction, as to the conditions on which the injunction against a boycott may issue; when these facts exist, the strong current of authority is that the publication and use of letters, circulars and printed matter may constitute a means whereby a boycott is unlawfully continued, and their use for such purpose may amount to a violation of the order of injunction. *Reynolds v. Davis*, 198 Massachusetts, 300; *Sherry v. Perkins*, 147 Massachusetts, 212; *Codman v. Crocker*, 203 Massachusetts, 150; *Brown v. Jacobs*, 115 Georgia, 452, 431; *Gray v. Council*, 91 Minnesota, 171; *Lehse Co. v. Fuelle*, 215 Missouri, 421, 472; *Thomas v. Railroad Co.*, 62 Fed. Rep. 803, 821; *Continental Co. v. Board of Underwriters*, 67 Fed. Rep. 310; *Beck v. Teamsters' Union*, 118 Michigan, 527; *Pratt Food Co. v. Bird*, 148 Michigan, 632; *Barr v. Essex*, 53 N. J. Eq. 102. See also *Ludwig v. Western Union Telegraph Co.*, 216 U. S. 156; *Bitterman v. L. & N. R. R.*, 207 U. S. 206; *Board of Trade v. Christie*, 198 U. S. 236; *Scully v. Bird*, 209 U. S. 489."

State laws prohibiting solicitation have been upheld even though the soliciting was carried on entirely by "speech" (*Williams v. Arkansas*, 217 U. S. 79) or by publication of advertisements. *Semler v. Oregon State Board of Dental Examiners*, 294 U. S. 608. Practicing law necessarily involves speech making but that does not give an unlicensed man the right to practice law—not even that part of the practice which constitutes no more than speech making.

The basic issue is whether or not a State under its police power may require persons engaged as paid professionals in the business of organizing employees into labor unions to register with the Secretary of State before engaging in such business in that State. We submit that this question has been answered in the affirmative by *City of Manchester v. Leiby* (1 Cir) 117 Fed. (2) 661, certiorari denied, 313 U. S. 562. That labor unions are separate functional institutions engaged "in a multitude of business and other concerted activities, none of which can be said to be the private undertakings of the members" is a fact of which this Court has recently taken judicial notice. *United States of America v. White*, 88 L. Ed. 1149, 1153. A state regulation requiring a paid professional representative of these big businesses to in effect do no more than leave his calling card with the Secretary of State when he comes into a state to engage in an "institutional activity" is clearly within the State's police power. *People of the State of New York ex rel Bryant v. Zimmerman*, 278 U. S. 63.

QUESTION NO. 2:

“Did the injunction forbid the speech (apart from the O’Sullivan solicitation) and is the order of contempt based in whole or in part on such speech? If not, is the speech used as an aggravation of the offense? If neither what is the purpose and effect of its recital in the papers and orders in this proceeding?”

COMMENT:

The temporary restraining order (R. 294, 315) did not “forbid the speech.” The order of contempt (R. 308, 309) is not based in whole or in part on such speech. The speech is not “used” as an aggravation of the offense. The offense was solicitation before being registered. The appellant used “speech” in connection with other acts and circumstances in order to violate the temporary restraining order, but speech making, as such, is not the gravamen of the offense.

We have pointed out above that the only “speech” directly involved was the O’Sullivan solicitation. As far as the present inquiry is concerned the “Thomas Speech” has neither purpose nor effect. *Allen v. United States*, 278 Fed. 429. The sufficiency of the evidence cannot be inquired into in this collateral proceeding. *Ex parte Lipscomb*, 111 Tex. 409, 239 S. W. 1101. *Ex parte Olson*, 111 Tex. 601, 243 S. W. 773, *Ex parte Terry*, 128 U. S. 289, 305, *Howat v. Kansas*, 258 U. S. 181, 189, 190. It is well settled under Texas practice that in a civil case

tried without a jury in the absence of findings of fact (See Rule 299, Texas Rules of Civil Procedure), it will be presumed in support of the judgment rendered that the court considered the competent and disregarded the incompetent evidence in reaching its judgment. *Keith Lumber Co. v. Houston Oil Co. of Texas*, 257 Fed. 1, 168 C.C.A. 213, certiorari denied, 250 U. S. 666, *Cates v. Clark*, 119 Tex. 519, 33 S. W. (2) 1065, *Lewis v. Perry & Co. Ins.* (Tex. Civ. App) 42 S.W. (2) 1038.

QUESTION NO. 3:

“Assuming the speech to be immune and assuming the words addressed to O’Sullivan to be a violation of a valid prohibition of solicitation, what is the effect on its constitutional validity of including both in one injunction?”

COMMENT:

The injunction (temporary restraining order) does not include the speech. It prohibited solicitation before registration and nothing more. It was no broader than the statute itself.

It is necessary to construe the language of the contempt judgment which recites that “R. J. Thomas is guilty of contempt of this Court *as charged in the information*” (R. 309) as a separate finding on each of the two paragraphs alleged in the motion for contempt (R. 297, 298) in order to answer this question. This is a strained construction because the

judgment would have referred to the two counts separately, if there had been any intention to make a distinction between them. This question was not raised, of course, by appellant in the Supreme Court of Texas nor in this Court upon the original presentation of this case. It cannot be raised in this proceeding which constitutes a collateral attack on the contempt judgment because the error, if any, arises not through lack of jurisdiction but by reason of its exercise. If the District Court had jurisdiction of appellant and the subject matter of the injunction suit, the contempt judgment is valid and cannot be set aside in this habeas corpus proceeding. *Tinsley v. Anderson*, 171 U. S. 101, 107, *Locke v. United States*, (5 Cir) 75 Fed. (2) 157, certiorari denied, 295 U. S. 733, and *In re Duncan*, 139 U. S. 449.

There is no merit, however, in the contention. The exact question was raised and decided by this court in *Dimmick v. Tompkins*, 194 U. S. 540, 551. In that case the appellant in a habeas corpus proceeding was attacking a judgment of a circuit court under which he was sentenced "at hard labor for two years" . . . "in the State prison of the State of California, at San Quentin." The single penalty was based on two counts in the indictment, the first for "making and presenting a false claim" and the fourth for "using a portion of the public moneys of the United States for a purpose not prescribed by law." The appellant was found guilty on both counts and he contended that the single sentence of two

years should be construed as being based on both counts with a penalty of one year for each conviction. Since the Federal statute authorized imprisonment in the State prison only where the sentence was for a longer period than one year, it was contended that the sentence was void. In overruling the contention, this Court said:

“It is also objected that the sentence is void because it directs imprisonment in the state prison for a period that does not exceed one year on each count of the indictment, and *In re Mills*, 135 U. S. 263, 268, is cited to sustain the proposition. In that case the prisoner was sentenced upon two indictments to imprisonment in the penitentiary, in one case for a year and in the other for six months, and it was held that the imprisonment was in violation of the statutes of the United States. See Rev. Stat. Secs. 5541, 5546, 5547.

“In the case at bar the sentence was for two years upon one indictment, and there is no statement in the record that there was a separate sentence each for one year upon the first and fourth counts of the indictment. In this we think there was no violation of the statute, and the sentence was therefore proper and legal. The appellant may have been sentenced upon one count only for two years. Although for some purposes the different counts in an indictment may be regarded as so far separate as to be in effect two different indictments, yet it is not true necessarily and in all cases. But this record shows a sentence for two years to the state prison, and there is nothing to show the

court was without jurisdiction to impose such sentence for the crime of which the defendant was convicted."

In the present case there is nothing to show that appellant was not sentenced on the first paragraph in the motion for contempt (the O'Sullivan solicitation) for the full statutory penalty. Article 1911, R. S. of Texas, 1925, limited the punishment for a single contempt to "imprisonment not exceeding three days" and "by fine not exceeding one hundred dollars." Since the contempt judgment imposed only the maximum statutory penalty for one offense, it cannot be said that the District Court considered the two paragraphs in the motion for contempt as charging two offenses or that the contempt judgment covered more than one offense. See, also, *Snyder v. United States*, 112 U. S. 216, *Claassen v. United States*, 142 U. S. 140, 146, 147.

The Supreme Court of Texas has recently held that "a habeas corpus proceeding is a civil remedy, as distinguished from a criminal remedy or proceeding, and that whether the prisoner is detained under civil or criminal process." *Harbison v. McMurray*, 138 Tex. 192, 158 S. W. (2) 284, 287. Section 12 of Article 5154a, which authorizes the District Courts and the Judges thereof "to issue any and all proper restraining orders, temporary and permanent injunctions, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act" also provides that "such proceedings shall be instituted, prosecuted,

tried and heard as other civil proceedings of like nature in said courts." In civil cases of injunction, all presumptions are in favor of the validity of the judgment when subjected to a collateral attack by a habeas corpus proceeding and a contempt judgment based thereon will be upheld unless the Court issuing the injunction had no jurisdiction and the injunction was wholly void. *Tinsley v. Anderson*, 171 U. S. 101, 107, *Howat v. Kansas*, 258 U. S. 180, 189, 190, *Locke v. United States*, (5 Cir.) 75 Fed. (2) 157, certiorari denied, 295 U. S. 733, *Fansteel M. Corp. v. Amalgamated Ass'n Iron, Steel & Tin Workers*, 295 Ill. App. 323, 14 N. E. (2) 991 certiorari denied, 306 U. S. 642. *Ex Parte Testard*, 101 Tex. 250, 253, 106 S. W. 319, *Ex parte Olson*, 111 Tex. 601, 611, 243 S. W. 773, *Ex parte Kimberlin*, 126 Tex. 60, 65, 66, 86 S. W. (2d) 717, *Ex parte Lee*, 127 Tex. 256, 266, 93 S. W. (2d) 720, *Ex parte Duncan*, 127 Tex. 507, 95 S. W. (2d) 675.

QUESTION NO. 4:

"Assuming the injunction invalid as applied to the speech, what was the duty of Thomas in respect of obedience so long as it was not set aside?"

COMMENT:

It was the duty of Thomas to obey the injunction so long as it was not set aside, even if it was invalid as applied to the speech. We concede that if Sec-

tion 5 of Article 5154a is unconstitutional as enacted, that the District Court of Travis County, Texas, for the 53rd Judicial District, which entered the temporary restraining order, had no jurisdiction of the subject matter. The District Court of Travis County is a constitutional court of general jurisdiction (Section 8, Article V, Texas Constitution) but it had no general jurisdiction to enjoin appellant merely because his acts would constitute a crime or penal offense or to punish appellant for contempt for violating a void order. *Ex parte Hughes*, 133 Tex. 505, 129 S. W. (2) 270. Section 12 of said Article 5154a is the source of the District Court's jurisdiction in this case but if Section 5 of that Article is unconstitutional, the Court would have no power to enforce obedience to it by issuing an injunction as authorized in Section 12.

If the temporary restraining order is invalid only in so far as it is applied to the speech and when applied to the O'Sullivan solicitation it is valid, the appellant cannot raise the question of its partial invalidity in this appeal, which constitutes a collateral attack on the contempt judgment. *Ex parte Testard*, 101 Tex. 250, 253, 106 S. W. 319, *Tinsley v. Anderson*, 171 U. S. 101, 106 and other cases cited at end of comment on Question No. 3.

QUESTION NO. 5:

"Is the application made of Section 5 consistent with the provisions of the National Labor Relations Act?"

COMMENT:

The application of Section 5 of Article 5154a in this proceeding is consistent with the provisions of the National Labor Relations Act. *N.L.R.B. v. Jones & Laughlin Steel Co.*, 301 U. S. 1, *Allen-Bradley Local v. Wisconsin Employment Relations Bd.*, 315 U. S. 740, *Terminal Ry. Association of St. Louis v. Brotherhood of R. R. Trainmen*, 318 U. S. 1, *Fansteel M. Corp. v. Amalgamated Ass'n Iron, Steel & Tin Workers*, 295 Ill. App. 323, 14 N. E. (2) 991 certiorari denied, 306 U. S. 642. *Wisconsin Labor Relations Board v. Fred Rueping Leather Co.*, 228 Wis. 473, 279 N. W. 673.

The validity of the National Labor Relations Act was upheld on the theory that it did not violate the "explicit reservations of the Tenth Amendment." *Jones & Laughlin case, supra*. In that case this Court said:

"The authority of the Federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce 'among the several states' and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system." 301 U. S. p. 30.

The labor unions raised this question in the case of *Allen-Bradley Local v. Wisconsin Employment Relations Bd.*, *supra*, where they were challenging

the Wisconsin Employment Peace Act on the ground that as enacted and as applied it violated the National Labor Relations Act. The Wisconsin Act sets up State machinery to settle labor disputes comparable to the National Labor Relations Board. It was admitted that the employee in that case was also subject to the National Labor Relations Act. This Court held, however, that the mere enactment of the National Labor Relations Act does not exclude state regulation. This court said:

“ . . . Nor can we say that the control which Congress has asserted over the subject matter of labor disputes is so prevasive (Cf. *Cloverleaf Butter Co. v. Patterson*, ante, p. 148) as to prevent Wisconsin, under the familiar rule of *Pennsylvania R. Co. v. Public Service Comm'n*, 250 U. S. 566, 569, from supplementing federal regulation in the manner of this order. Sec. 7 of the federal Act guarantees labor its ‘fundamental right’ (*Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33) to self-organization and collective bargaining. Sec. 8 affords employees protection against unfair labor practices of employers including employer interference with the rights secured by Sec. 7. Sec. 9 affords machinery for providing appropriate collective bargaining units. And Sec. 10 grants the federal Board ‘exclusive’ power of enforcement. It is not sufficient, however, to show that the state Act might be so construed and applied as to dilute, impair, or defeat those rights. *Watson v. Buck*, supra. Nor is the unconstitutionality of the provisions of the State Act which underlie the present order established by a showing that other parts of the statute are incompat-

ible with and hostile to the policy expressed in the federal Act. Since Wisconsin has applied to appellants only parts of the state Act, the conflict with the policy or mandate of the federal Act must be found in those parts." 315 U. S. 750.

The Act in question, of course, does not deal with labor disputes as such and there has been no possible conflict between it and the National Act suggested in the evidence or by the briefs. Section 5 of the Act, as enacted and as applied in this case, is not inconsistent with the National Labor Relations Act. *Terminal Ry. Ass'n. of St. L. v. Brotherhood of R. R. Trainmen*, 318 U. S. 1.

QUESTION NO. 6:

"Assuming that petitioner had a constitutional right to make a general argument and solicitation to the entire assembly of workers, could the state punish him in a single penalty because he picked out one member of the assembly and addressed a solicitation to him by name?"

COMMENT:

If Section 5 of Article 5154a, which prohibits solicitation by paid labor organizers before registration is constitutional, the temporary restraining order which follows the statute is constitutional and the punishment of appellant for his admitted violation of the order through his solicitation of Pat O'Sullivan (R. 41) is likewise constitutional. (See,

cases cited on p. 12, supra.) The fact that appellant may have done other things which he had a constitutional right to do does not mitigate his contempt of the court in admittedly doing what the court had previously forbidden him to do, viz., soliciting members for a labor union prior to his registration with the Secretary of State. (See, cases cited on p. 4, supra.) The ultimate issue, therefore, is whether or not Sections 5 and 2-C of the Texas Act, as enacted, are constitutional. We submit that this is a valid regulation and that the judgment appealed from for that reason should be affirmed.

Respectfully submitted,

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Assistant Attorney General
Attorneys for Appellee, H. W.
Collins, Sheriff of Travis
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NO. 14

IN THE
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OCTOBER TERM, 1944

R. J. THOMAS,

Appellant

v.

H. W. COLLINS, SHERIFF
OF TRAVIS COUNTY, TEXAS,

Appellee

REPLY TO BRIEF OF THE UNITED STATES
AS AMICUS CURIAE

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*To the Honorable The Supreme Court of the United
States:*

So much time has now elapsed since the original presentation and the reargument in this case that we desire to remind the Court of certain points

which were brought out only in oral argument. We did not file a written reply to the *amicus curiae* briefs for the reason that they do not, in our opinion, present anything new but the brief filed for the United States contains certain inaccuracies as to the record.

At the bottom of page 5 and top of page 6 of the brief for the United States appears this sentence: "Appellant, having been remanded to the custody of the Sheriff of Travis County, Texas, after sentence, filed a petition for a writ of habeas corpus in the Supreme Court of Texas (R. 312-314) alleging, as he had in the trial court (R. 66-67, 304-308), that the statute was unconstitutional because, *inter alia*, it was in conflict with the provisions of the National Labor Relations Act (Appellant's brief before the Supreme Court of Texas, pp. 45-46)."

The appellant did not allege in the trial court or in his petition for writ of habeas corpus in the Supreme Court of Texas that the statute in controversy was in conflict with the provisions of the National Labor Relations Act. The amended application for writ of habeas corpus appears in the record on pages 312 to 314 and it includes no such allegation. The original application for writ of habeas corpus, which was not printed, contained no such allegation. The answer to the complaint filed by appellant in the trial court which appears on pages 304 to 308 contains no such allegation. The pleading referred to by appellant as appearing on

pages 66 to 67 of the record was a pleading in another case in another court, and it was introduced in the trial court as evidence and not as a part of the pleadings in the hearing on the contempt charge. R. 48. This pleading in Cause No. 68729 in the 98th District Court of Travis County, Texas, was a suit for declaratory judgment brought by the Labor Unions and union officials against certain State officials for the purpose of having the entire Texas Labor Regulatory Act construed and its validity determined. It was introduced in the contempt hearing for the purpose of negating appellant's contention that it was necessary for him to violate the temporary restraining order issued against him in order to secure a test of the constitutionality of Section 5 of the Texas Labor Regulatory Act. This pleading in this other case showed on its face that Section 5 of the Act was already before another District Court in another case in which Appellant Thomas was a party plaintiff.

At the top of page 8 of the brief for the United States appears this statement: "The Court further held that although the statute dealt with a subject covered by the National Labor Relations Act, it was not superseded thereby."

This statement is also incorrect. The Supreme Court of Texas did not hold that Section 5 of the Texas Act "dealt with a subject covered by the National Labor Relations Act." In writing on the subject in a comprehensive manner the court did

refer to the principle that "the fact that the Federal Government has legislated on the subject under the commerce clause does not exclude the right of the State to legislate on the same subject under its police power" but there was nothing in the application for writ of habeas corpus to the Supreme Court of Texas which raised the issue of conflict between Section 5 of the Texas Act and the National Labor Relations Act and no such contention was made in oral argument before the Supreme Court of Texas. The first time that the question of conflict between Section 5 of the Texas Act and the National Labor Relations Act has been made by appellant in his pleading or specifications of error was Paragraph No. 16 of appellant's motion for rehearing in the Supreme Court of Texas. R. 335. The appellant did not brief this point in either of his briefs filed in this court, and it was first raised in this court on the court's own motion in the order entered at the last term in Cause No. 569.

We further pointed out in oral argument that the Government's contention as to "anonymity" and "timeliness" on which it predicates its argument as to conflict has no application to the facts of this case. The appellant as a voluntary witness on his own behalf in the trial court stated without contradiction that he knew "about six weeks ago" that he was coming to Texas to solicit members for the Oil Workers Union (R. p. 33) and appellant's own evidence shows that he was advertised as the featured speaker on the program which was distributed

— 5 —

prior to the Oil Workers Victory Rally at Peily, City Hall, September 23, 1943 and that there was no attempt by him or anyone else to conceal his identity.
R. 279.

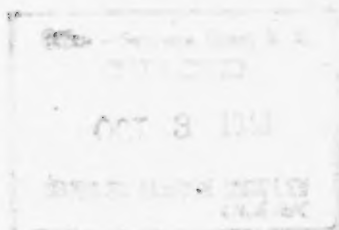
Furthermore, the evidence does not show that appellant has the status of an employee or that the State of Texas has the status of an employer within the meaning of the National Labor Relations Act.

Respectfully submitted,

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FILE COPY



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H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS

APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

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No. 14

R. J. THOMAS, APPELLANT

v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS

APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of the State of Texas (R. 318-327) is reported at 141 Tex. 591, 174 S. W. (2d) 958. The district court rendered no opinion; its order adjudging appellant in contempt may be found at R. 308-309.

JURISDICTION

The jurisdiction of this Court is invoked under Sections 237 (a) of the Judicial Code.

QUESTION PRESENTED

This brief is filed in response to the invitation of the Court to the Solicitor General. It is limited to discussion of the 5th question stated by the Court, namely: whether the application made of Section 5 of the Texas Act is consistent with the provisions of the National Labor Relations Act.

STATUTES INVOLVED

The statutes involved are House Bill No. 100, Acts Texas, 1943, 48th Leg., c. 104, p. 180 (Vernon's Ann. Tex. Stat. Art. 5154a) and the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*). The pertinent provisions of each statute are attached as appendices A and B, respectively, to this brief, pp. 43-44, 45-48, *infra*.

STATEMENT

The efforts of the Oil Workers International Union, Local 1002, affiliated with the C. I. O. (hereinafter called the Union), and of its predecessors, to organize the Baytown, Texas, refinery of the Humble Oil Company, have given rise to three successive proceedings before the National Labor Relations Board (hereinafter called the Board). In the first two proceedings the Board assumed jurisdiction, found that the company had committed unfair labor practices, and entered orders requiring the company to cease and desist

and to take certain affirmative action.¹ Before the company had complied with the order in the second proceeding, the third of these proceedings was instituted when the Union, on April 28, 1943, filed a petition requesting the Board to investigate and certify the Union as exclusive bargaining representative of these employees. Pursuant to this petition, the Board between July 15 and July 24, 1943, conducted a hearing to determine whether an election should be held to resolve the question affecting commerce which had arisen concerning the representation of the employees of the Baytown refinery² (R. 33-34).

Pending the Board's decision, the Union continued its organizing efforts among the employees of the Company and arranged to hold a "Victory

¹ *Matter of Humble Oil & Refining Company*, 16 N. L. R. B. 112, 114-115, 116-134, enforced as modified, 113 F. (2d) 85 (C. C. A. 5); *Matter of Humble Oil & Refining Company*, 48 N. L. R. B. 1118, 1123, 1139, enforced, 140 F. (2d) 777 (C. C. A. 5).

² In its Decision and Direction of Election issued on October 27, 1943, in *Matter of Humble Oil & Refining Company*, 53 N. L. R. B. 116, 120, n. 7, the Board noted: "In a previous case involving the same parties, *Matter of Humble Oil & Refining Co.*, 48 N. L. R. B. 1118, the Board found that the Company had violated Section 8 (1) and (3) of the Act. To date there has been no compliance with the Board's Order in this matter. In view of unremedied unfair labor practices of the Company, we shall entertain the petition of the Oil Workers, although supported by a showing of representation less than that which we would require were there no special circumstances indicating that the petitioning union has been handicapped in its effort to secure signed designations as bargaining representative."

Rally" on the evening of September 23, 1943, in the city of Pelly, Texas, which is chiefly inhabited by employees of the Baytown Refinery (R. 5, 279).

Appellant R. J. Thomas, president of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (hereinafter called the U. A. W.) and one of the vice presidents of the Congress of Industrial Organizations, with which the U. A. W. is affiliated, was invited to come from his home in Detroit, Michigan, to address this meeting (R. 22-23, 33).

On September 22, 1943, shortly after appellant arrived (R. 34), Judge Gardner of the 53d District Court, Travis County, Texas, on complaint filed by the Attorney General of the state (R. 291-294), issued, ex parte, a temporary restraining order enjoining appellant while in the State of Texas from soliciting members in the Union or any other labor organization affiliated with the C. I. O. "without first obtaining an organizer's card as required by law," and also issued an order that appellant appear before him on September 25, 1943, 2 days after the scheduled meeting, to show cause why a temporary injunction should not issue (R. 294-295, 315-317). The temporary restraining order and the order to show cause were served on appellant at Houston, Texas, on September 23, 1943, approximately 5 hours prior to the meeting (R. 35). At the meeting, which was attended primarily by employees of the Baytown Refinery of the Humble Oil Company (R.

5, 37-39), appellant, despite the restraining order, and without having applied for or obtained an organizer's card (R. 10, 35-37), delivered a speech, in the course of which he explained the advantages of union membership, and solicited the employees in the audience generally, and one employee by name, to join the Union (R. 41, 279-290). At the close of the meeting, appellant was arrested for soliciting members for the Union without first obtaining a license as required by the Texas statute (R. 42). After entering a plea of not guilty, appellant was released on bond pending trial (R. 42). On the following day the District Court of Travis County, acting pursuant to a motion filed by the Attorney General of the State of Texas to adjudge appellant in contempt of the court's temporary restraining order, issued an order for his attachment (R. 295-299).

At a hearing before District Judge Gardner on September 25, 1943, appellant moved to dismiss the complaint and quash the contempt proceedings on the ground that the Texas statute was unconstitutional (R. 299-302). The District Court overruled appellant's motion and found appellant guilty of contempt of court for "violation of the law and of the order of this court" and sentenced him to "imprisonment for a period of 3 days and a fine of One Hundred (\$100.00) Dollars" (R. 308-309). Appellant, having been remanded to the custody of the Sheriff of Travis County, Texas, after sentence, filed a petition for

a writ of habeas corpus in the Supreme Court of Texas (R. 312-314) alleging, as he had in the trial court (R. 66-67, 304-308), that the statute was unconstitutional because, *inter alia*, it was in conflict with the provisions of the National Labor Relations Act (Appellant's brief before the Supreme Court of Texas, pp. 45-46). Upon posting a bond set by the Chief Justice of the Supreme Court of Texas, appellant was released from custody. After argument, the Supreme Court of Texas on October 27, 1943, entered its opinion and judgment sustaining the constitutionality of the statute, denying appellant's petition for a writ of habeas corpus, and remanding appellant to the custody of the Sheriff (R. 318-327).

In its opinion the court construed the registration requirement of the Texas statute to apply "only to those organizers [employees and non-employees alike] who for a pecuniary or financial consideration solicit" membership in a labor organization (R. 322), noted that "the Act does not require a paid organizer to secure a license, but merely requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union," and stated that the Act makes it the "mandatory duty" of the Secretary of State to "accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith" (*id.*). The court found that "the Act

interferes to a certain extent with the right of the organizer to speak as paid representative of the Union" (R. 323) but held that such interference was not prohibited by the Constitution because the legislation constituted a reasonable exercise of the state's police power to protect "both the laborer and the union" (R. 322-323) against fraud arising from the following asserted facts:

Not infrequently thousands of employees work at a single plant. It is impossible for them to know each other, or to know those who purport to represent the various unions. When a laborer is approached by an alleged organizer, it is impossible for him to know whether he is an impostor or whether he has authority to represent the Union which he purports to represent * * * It is important to the laborer that he be able to know that the representations of the purported organizer who approaches him with a request that he join the union and pay his dues in order to be able to work on a particular job are the representations of an accredited agent of the union and that the promises of such representative will be respected and carried out by the union; and it is equally important to the union that the purported representative be identified in order that pretenders under the guise of authority from the union may not misrepresent the organization, nor collect and squander funds intended for its use * * * (*id.*).

The court further held that although the statute dealt with a subject covered by the National Labor Relations Act, it was not superseded thereby: "The fact that the Federal Government has legislated on the subject under the commerce clause does not exclude the right of the State to legislate on the same subject under its police power" (R. 322). On November 24, 1943, the court denied appellant's motion for rehearing (R. 327-336).

SUMMARY OF ARGUMENT

The right of self-organization is a fundamental guarantee of the National Labor Relations Act. That right, as the Board has recognized, includes the right of employees, personally or through organizers, to solicit membership in labor organizations and to receive from others information and advice concerning such membership. The Act contemplates, in the light of experience under modern industrial conditions, that the services of organizers will be availed of by employees. The legislative history of the federal Act shows that Congress exhibited anxiety lest in the field of organization the activities of employees be hampered by indefinite legal concepts such as coercion, and that this anxiety was in contrast to its attitude with respect to the application of local laws dealing with violence and similar misconduct in the field of labor disputes. The issue is whether the

rights which are thus at the very core of the federal Act are unduly impaired by application of the provisions of the state law here challenged.

The state law discloses to employers the identity of paid union representatives and so makes available information which has often been the prelude to discrimination and reprisals by hostile employers, and which such employers have frequently sought to obtain despite the hazard of charges of unfair labor practices. The importance of non-disclosure to employers of the identity of union representatives at the critical formative stage of labor organization is reflected in the provision in the federal Act authorizing secrecy in the conduct of employee elections for bargaining representatives. Congress did not anticipate that with the enactment of the federal Act the repressive and hostile environment in which organizational efforts had been carried on would at once be dissipated; and the Board's experience shows that labor organizations still commonly encounter the same hazards. Congress has not determined that indiscriminate disclosure of the identity of labor organizers has become compatible with the exercise by employees of their right to freedom of self-organization.

In addition, the exercise of the right of self-organization often depends in large measure upon the promptness with which union representatives are able to answer the call of employees.

The delays consequent upon the registration provisions of the state law are likely to result in precluding the participation of organizers or fellow employees compensated for their efforts. Moreover, since the state law impedes the presentation of pronion views on the eve of employee elections, while permitting unrestrained antiunion appeals, the Board may find it necessary to mitigate the effects on the integrity of the election process by postponing elections or by setting them aside, and thereby be forced to sacrifice a measure of the stability which the election process is designed to achieve.

Whether the state law thus² places an undue burden on rights guaranteed by the federal Act depends upon a practical judgment which takes into consideration the importance of the local interests protected by the local law. The state court regarded the law as one designed against fraud in the collection of dues and in representations concerning labor unions. It may be assumed that these are objectives for which proper measures may be framed in local legislation. The present statute, however, employs means which are related only indirectly to the collection of funds or to fraudulent misrepresentations. No registration or organizer's card is required as a condition to the collection of dues, and the latter function is in large part distinct from the organizing function and is most frequently per-

formed by different persons. It is a fairly common practice during the period of organization for unions to waive dues obligations until a collective bargaining relationship has been established. Nor does the statute deal directly with misrepresentations. Unpaid organizers or impositors may solicit memberships without cards, and the employees thus solicited have no way of determining the authenticity of the representations made. Paid organizers who do carry cards and who may make misrepresentations are not subjected to any sanctions by the state law other than those theretofore existing. These considerations are pertinent independently of the fact that so far as appears the state legislature did not have evidence before it showing that persons had in fact solicited memberships in labor organizations claiming to represent the organizations when in truth they did not, and there appears to have been no case in the history of the Board in which an employee's membership in a labor organization was challenged on the ground that the person who solicited him to join misrepresented himself to be a representative of the organization.

On balance, it is believed that the means adopted by the state law produce an impairment of federally protected rights which is quite disproportionate to the possible protection of the legitimate concerns of the state, and that conse-

quently the provisions of the state law here in question are inconsistent with the National Labor Relations Act.

ARGUMENT

The state statute as here applied is inconsistent with rights guaranteed by the National Labor Relations Act

The state statute as here applied places a prohibition upon the activity of labor organizers, as defined in the statute, who have not obtained registration cards from the Secretary of State. The question, to adopt the language of the Court in *Allen-Bradley Local 1111 v. Wisconsin Employment Relations Board*, 315 U. S. 740, 750-751, is whether "the freedom to engage in such conduct" is "so essential or intimately related to a realization of the guarantees of the federal Act that its denial is an impairment of the federal policy." In discussing this question we shall consider (1) the rights guaranteed by the federal Act, with particular reference to the right of self-organization and the place of the labor organizer in that process; (2) the respects in which the applicable provisions of the state law impinge on that right and on the administration of the federal Act; and (3) the interests which it is asserted are protected by the provisions of the state law.

1. *The rights guaranteed by the federal Act.*—

The National Labor Relations Act constituted an attempt to reverse, by statutory enactment, the long-standing practical denial of opportunities of self-organization and collective bargaining, in the realization that such denial had produced widespread industrial warfare and interferences with the flow of commerce. Both collective bargaining and freedom of self-organization are expressly guaranteed by the Act. These guarantees are the fundamentals of the Act. Section 1 declares the federal policy of "protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing." Section 7 declares that employees "shall have the right to self-organization, to form, join, or assist labor organizations." In part, the enforcement of these rights was committed to the National Labor Relations Board through its power of issuing appropriate orders directed against employers, enforceable by the courts. In part the guarantees were to be effectuated through the Board's supervision of employee elections and certification of bargaining representatives. In addition, the guarantees stand as a declaration of federal policy against which state action must be tested. Thus, apart from unfair labor practices by employers, state laws which prohibited self-organization by employees would undoubtedly fall before the provisions of the federal Act.

More particularly, the right of self-organization includes the right of employees, personally or through organizers, to solicit membership in labor organizations and to receive information from others concerning such membership. The right thus assured and protected, to urge the advantages of self-organization, to aid and assist other employees in forming labor organizations, to proselytize and solicit members on behalf of labor organizations, and the correlative right, recognized by the Board from its earliest days, "to receive aid, advice and information from others" concerning affiliation with labor organizations³ are basic to the entire statutory scheme for the promotion of collective bargaining.

The Act contemplates that in the exercise of these rights employees will avail themselves of the services of organizers. S. Rep. 573, 74th Cong., 1st sess., p. 6. This has been the common practice in the United States (R. 26-32) from a period long before the Act was passed, and the necessity for such a practice is clear. Employees frequently cannot afford to risk their jobs by extensive participation in organizing activity. Furthermore,

³ In *Matter of Harlan Fuel Company*, 8 N. L. R. B. 25, 32, the Board stated: "The rights guaranteed to employees by the Act include full freedom to receive aid, advice, and information from others, concerning those rights and their enjoyment." See also, *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, enforced, 116 F. (2d) 816 (C. C. A. 6); *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258.

under modern industrial conditions it has often been found that the type of unionism deemed appropriate can be promoted only by persons who devote their full time and knowledge to the task. Cf. H. Rep. 1147, 74th Cong., 1st sess., p. 10. The stabilization of competitive wage rates and working conditions within and between industries is a specific objective of the federal statute, declared in Section 1. In order to extend union organization to plants remote from the organized plants whose economic standards are threatened it has long been found necessary to designate representatives to conduct organizational activities. The Board has clearly recognized the place of freedom of solicitation in the rights guaranteed by the Act. In *Matter of Harlan Fuel Company*, 8 N. L. R. B. 25, 32, the Board said: "Interference * * * with the lawful conduct of organizational activities among employees by labor organizers is in derogation of rights secured employees under Section 7 of the Act."

Protection of the correlative right of employees "to receive aid, advice, and information from others concerning membership in labor organizations" is equally vital to the attainment of the statutory objectives.⁴ The Board and the courts have recognized that that right is invaded where, for example, employers utilize their con-

⁴ National Labor Relations Board, *Sixth Annual Report* (Gov't Print. Off., 1942), pp. 43-44.

trol over property on which employees work and live to bar contact with union representatives.⁵ When an employer thus interferes with free access by his employees to organizers or by organizers to his employees, the Board issues a cease and desist order, coupled with such affirmative requirements as may appear proper. When such interference comes from sources other than an employer it may also be the basis for Board action. Thus, if an election is pending, the existence of interference from any source which precludes equal opportunities to all proper contestants will

⁵ *Matter of Harlan Fuel Co.*, 8 N. L. R. B. 25, 31-32, 63 (employees living in company town denied access to union representative); *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 105-106, 133 (*idem*), enforced, 116 F. (2d) 816 (C. C. A. 6); *Matter of American Cyanamid Co.*, 37 N. L. R. B. 578, 585-586 (*idem*); *Matter of Ozan Lumber Co.*, 42 N. L. R. B. 1073, 1081, 1084 (*idem*); *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258, 270 (employees living in company-owned logging camp denied access to union representatives). Cf. *Matter of Waterman Steamship Corp.*, 7 N. L. R. B. 237, enforced, 309 U. S. 206, 224-226 (employees living aboard ship denied access to union representatives); *Matter of Cities Service Oil Co.*, 25 N. L. R. B. 36, 57 (*idem*), enforced, 122 F. (2d) 149, 152 (C. C. A. 2); *Matter of Richfield Oil Co.*, 49 N. L. R. B. 593 (*idem*), enforced, June 30, 1944 (C. C. A. 9); *Republic Aviation Corp. v. National Labor Relations Board*, 142 F. (2d) 193 (C. C. A. 2), petition for certiorari pending, No. 226, this Term; *LeTourneau Company of Georgia v. National Labor Relations Board*, 143 F. (2d) 67 (C. C. A. 5), petition for certiorari pending, No. 452, this Term.

cause the Board to postpone the election or to set it aside if it has already been held.⁶

While Congress has not made explicit the boundary between federal and state power with respect to activities of an organizational character, evidence is not wanting that Congress desired to protect this field from the varying conceptions of proper and improper conduct which might be reflected in local laws. Congress rejected a proposal to prohibit "employees and labor organizations * * * from interfering with, restraining, or coercing employees * * * in their choice of representatives" (79 Cong. Rec. 7668-7675). Both the Senate and House committees likewise refused to accept the proposed amendment. Their refusal was not based on the view that these activities were already, or could be, adequately regulated by the States, but on the view that prior restraints imposed upon the activities of "workers, employees, and labor organizations * * * would defeat the very objects of the bill." In explaining their rejection the committees termed the reasons advanced for the amend-

⁶ Cf. e. g., *Matter of Minneapolis-Moline Power Implement Co.*, 7 N. L. R. B. 840, 842-843; *Matter of National Tea Company*, 41 N. L. R. B. 774; *Matter of Curtiss-Wright Corp.*, 43 N. L. R. B. 795; *Matter of Kilgore Mfg. Co.*, 45 N. L. R. B. 468; *Matter of Sears Roebuck and Company*, 47 N. L. R. B. 291; *Matter of Continental Oil Co.*, 58 N. L. R. B., No. 33.

ment an "erroneously conceived mutuality argument" premised on the "untenable" assumption "that employees and labor organizations should be no more active than employers in the organization of employees" (S. Rep. No. 573, 74th Cong., 1st sess., p. 16; H. Rep. No. 1147, 74th Cong., 1st sess., p. 16). Prior restraints, as the committees pointed out, "would not merely outlaw the undesirable activities which the word [coercion] connotes to the layman, but would raise in Federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organizations" (*idem*). Congress did not intend by the omission of this prohibition from the bill to prevent the Board from adopting such rules aimed at securing free designations by employees as would protect employees against the use of misrepresentation, fraud and violence in obtaining memberships. The Board was vested with the power to investigate and certify the representative freely chosen by a majority of the employees in an appropriate unit. Pursuant to this power the Board necessarily must, whenever designations are challenged, determine whether misrepresentation, fraud or violence occurred. The Circuit

¹ *Brotherhood of Railway & Steamship Clerks v. Virginian Railway Co.*, 125 F. (2d) 853, 857-858 (C. C. A. 4); *Matter of Sanco Piece Dye Works*, 38 N. L. R. B. 690, 708; *Matter of H. McLachlan & Co.*, 45 N. L. R. B. 1113, 1124-1125; *Matter of Wm. Tehel Bottling Co.*, 30 N. L. R. B. 440, 451, enforced, 129 F. (2d) 250, 254 (C. C. A. 8); *Matter of Dahlstrom Metallic Door Co.*, 11 N. L. R. B. 408, 412,

Court of Appeals for the Second Circuit summarized the Board's duties in this respect in *National Labor Relations Board v. Dadourian Export Corporation*, 138 F. (2d) 891, 892:

* * * the statute [does not] sanction
 * * * the selection of a bargaining representative by such means. Fraud—which this was—will vitiate consent as well as violence, and the Board itself implies that a vote procured by violence should not be counted. It is quite true that only an employer can be guilty of "unfair labor practices," (§ 8), but § 7 confers the right on all employees freely to choose their bargaining representatives, and the invasion of that right is as much a wrong, when committed by a union organizer as by an employer. The fact that when it is not committed by an employer, the Board has no power to use its peculiar remedies to effectuate the policies of the act, must not blind us to the fact that those policies include employees' freedom from interference with their choice of representatives from any source whatever.

enforced, 112 F. (2d) 756, 757-758 (C. C. A. 2); *Matter of Karp Metal Products Co.*, 42 N. L. R. B. 119, enforced, 134 F. (2d) 954, 956 (C. C. A. 2); *Matter of Van DeKamp's Holland-Dutch Bakers, Inc.*, 36 N. L. R. B. No. 135; *National Labor Relations Board v. Dadourian Export Co.*, 138 F. (2d) 891, 892-893 (C. C. A. 2); *Matter of Fisher Body Corporation*, 7 N. L. R. B. 1083, 1091-1092; National Labor Relations Board, *Third Annual Report* (Gov't Print. Off., 1939), pp. 150-156; *Second Annual Report* (Gov't Print. Off., 1937), p. 109.

The position of Congress with respect to the conduct of employees and labor organizations in connection with the choice of representatives is in contrast to its position with respect to employee misconduct during strikes and picketing in labor disputes. As this Court pointed out in the *Allen-Bradley* case, *supra*, the legislative history indicates that Congress designedly left open for state control the subject of violence and other excesses during labor disputes. The Senate committee, rejecting the suggestion that the Act should render illegal employee misconduct in labor disputes, as distinguished from employee misconduct in soliciting members, said: "The bill is not a mere police court measure. The remedies against such acts [fraud and violence during strikes and picketing by employees and labor organizations] in the State and Federal courts and by the invocation of local police authorities are now adequate as arrests and labor injunctions in industrial disputes throughout the country will attest." (S. Rep. No. 573, 74th Cong., 1st Sess., p. 16.)

We do not suggest that in the field of solicitation of membership the states are precluded from applying local laws for the punishment of violence, fraud, or extortion. What we do suggest is that Congress exhibited anxiety lest the organizing activities of employees be hampered by indefinite legal concepts such as coercion, and that this anxiety was in contrast to its attitude with respect to violence and similar misconduct

in labor disputes. The issue, then, is whether the new type of control embodied in the Texas statute operates as a substantial impairment of the rights which are the very core of the federal Act, so that its application would have been deemed by Congress to be inconsistent with the federal guarantees. We thus turn to a consideration of the respects in which the provisions in question impinge upon the exercise of those rights and upon the administration of the federal Act.

2. *Interference with freedom of self-organization.*—(a) *Anonymity.*—Whether the provisions of the state law interfere substantially with the right of self-organization is to be considered in the light of historical and recent experience, with which Congress has been fully familiar. It is widely recognized, and the cases before the Board show, that the participants in an organizational movement, particularly at the "critical formative stage" (*Kansas City Power & Light Co. v. National Labor Relations Board*, 111 F. (2d) 340, 349 (C. C. A. 8)), often take great pains to shield both the identity of the leaders and the fact that such a movement is in progress from the employer of the employees involved.* These

* *Matter of Security Warehouse & Cold Storage Co.*, 35 N. L. R. B. 857, 877 ("Elaborate precautions had been taken by the Union to keep the membership campaign a closely guarded secret. The union organizers had issued instructions that no activities were to be carried on during working hours, no union buttons displayed, and no disclosure of the names of persons who had joined was to be made even to other employees who were joining"), enforced, 136 F. (2d)

precautions are taken, of course, to avoid the possibility of reprisals by hostile employers and to secure an atmosphere in which the merits of self-organization can be considered by the employees free from restraining influences. The necessity of maintaining secrecy where it is suspected that the employer is hostile becomes evident by mere reference to the lengths to which

829 (C. C. A. 9); *Matter of H. McLachlan & Co.*, 45 N. L. R. B. 1113, 1120-1121; *Matter of Reclon Products Co.*, 48 N. L. R. B. 1202, 1207-1208 ("In February 1941, the Union began secretly to organize the respondent's employees. * * * When these employees pointed out the failure of previous attempts to organize * * * it was decided to keep secret the identity of [those] participating in the organizational activities"), enforced, July 20, 1941 (C. C. A. 2); *Matter of Century Projector Corp.*, 49 N. L. R. B. 636, 640 ("Shortly after being hired Morrison began attempts to organize the respondent's plant. He enlisted the cooperation of Persky, who in turn persuaded Decker to join with them in their effort. At first they attempted to conceal their union activities"), enforced, 141 F. (2d) 488 (C. C. A. 2); *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813, 818 ("La Salle was active in soliciting employees to join the Union; he did so secretly * * *"), enforced as modified, July 10, 1944 (App. D. C.); *Matter of National Container Corp.*, 57 N. L. R. B. No. 102 ("Solicitation of members proceeded quietly and secretly"); *Matter of Ohio Public Service Co.*, 52 N. L. R. B. 725, 735 ("Yingling and the others who were active in initiating the Union at the plant attempted to keep their activities from the attention of [the company officials]"), enforced, July 7, 1944 (C. C. A. 6); *Matter of Leland-Gifford Co.*, 48 N. L. R. B. 120, 125-126 ("For a period of more than a year [the employees] had been discussing the matter of 'getting the grinders together.' They had, however, exercised extreme caution in their conversations * * * They were extremely careful as to whom they talked for fear of speaking to a 'stooge'"). See also note 9, *infra*.

such employers have gone to ascertain the identity of union representatives. "Interrogation and

* See, generally, Report of the Senate Committee on Education and Labor, pursuant to S. Res. 266 (74th Cong.) (S. Rep. No. 46, 75th Cong., 2d Sess., part 3); Calkins, C., *Spy Overhead* (1937); Howard, Sidney, *The Labor Spy* (1924); Huberman, Leo, *The Labor Spy Racket* (1937). The reports of the National Labor Relations Board and the court opinions enforcing Board orders are replete with instances of espionage and surveillance. *National Labor Relations Board v. Link Belt Co.*, 311 U. S. 584, 588; *National Labor Relations Board v. Fairsteel Metallurgical Corp.*, 306 U. S. 240, 251; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 230; *National Labor Relations Board v. Fruehauf Trailer Co.*, 301 U. S. 49, 54-55; *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261, 270; *National Labor Relations Board v. Baldwin Locomotive Works*, 128 F. (2d) 39, 49 (C. C. A. 3); *Bethlehem Steel Co. v. National Labor Relations Board*, 120 F. (2d) 641, 646, 647 (App. D. C.); *Atlas Underwear Co. v. National Labor Relations Board*, 116 F. (2d) 1020, 1022-1023 (C. C. A. 6); *Kansas City Power & Light Co. v. National Labor Relations Board*, 111 F. (2d) 340, 355, 358 (C. C. A. 8); *National Labor Relations Board v. General Motors Corp.*, 116 F. (2d) 306, 311 (C. C. A. 7); *Reliance Mfg. Co. v. National Labor Relations Board*, 125 F. (2d) 311, 314, 320 (C. C. A. 7); *Republic Steel Corp. v. National Labor Relations Board*, 107 F. (2d) 472, 474 (C. C. A. 3), certiorari denied, 309 U. S. 684; *National Labor Relations Board v. West Texas Utilities Co.*, 119 F. (2d) 683, 684 (C. C. A. 5); *Aguilines, Inc. v. National Labor Relations Board*, 87 F. (2d) 146, 152 (C. C. A. 5); *National Labor Relations Board v. Planters Mfg. Co.*, 105 F. (2d) 750 (C. C. A. 4), enforcing 10 N. L. R. B. 733, 733; *National Labor Relations Board v. Brashear Freight Lines*, 119 F. (2d) 379, 381 (C. C. A. 8); *Humble Oil & Refining Co. v. National Labor Relations Board*, 113 F. (2d) 85, 91-92 (C. C. A. 5); *National Labor Relations Board v. Quality Art Novelty Co.*, 127 F. (2d) 903, 905 (C. C. A. 2); *National Labor Relations Board v. Cleveland Cliffs Iron Co.*, 133 F. (2d) 295, 301 (C. C. A. 6).

espionage are often the prelude to discrimination,¹⁰ beatings and bloodshed.¹¹

¹⁰ *National Labor Relations Board v. Bradford Dyeing Assn.*, 310 U. S. 318, 327; *National Labor Relations Board v. Waterman Steamship Corp.*, 309 U. S. 206, 222; *National Labor Relations Board v. Arcade-Sunshine Co.*, 118 F. (2d) 49, 50 (App. D. C.) certiorari denied, 313 U. S. 567; *National Labor Relations Board v. Buchelder*, 120 F. (2d) 574, 577 (C. C. A. 7), certiorari denied, 314 U. S. 647; *National Labor Relations Board v. Freezer & Son*, 95 F. (2d) 840, 841 (C. C. A. 4); *Matter of Hawk & Buck Co.*, 25 N. L. R. B. 837, 843-851, enforced, 120 F. (2d) 903, 905; *Matter of Planters Mfg. Co.*, 10 N. L. R. B. 735, 740-742, enforced, 105 F. (2d) 750 (C. C. A. 4); *National Labor Relations Board v. Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667, 670, 671 (C. C. A. 8); *Triplee Screw Co. v. National Labor Relations Board*, 117 F. (2d) 858, 861 (C. C. A. 6); *National Labor Relations Board v. Bank of America Assn.*, 150 F. (2d) 624, 628-629 (C. C. A. 9), certiorari denied, 318 U. S. 791; *National Labor Relations Board v. Eclipse Moulded Products Co.*, 126 F. (2d) 576, 579-580 (C. C. A. 7); *North Carolina Finishing Co. v. National Labor Relations Board*, 133 F. (2d) 574, 745-748 (C. C. A. 4), certiorari denied, 320 U. S. 738; *National Labor Relations Board v. Walworth Co.*, 124 F. (2d) 816, 817-818 (C. C. A. 7); *National Labor Relations Board v. Entwistle Mfg. Co.*, 120 F. (2d) 532, 535 (C. C. A. 4); *Matter of Consolidated Lumber Co.*, 1 N. L. R. B. 71, 105-106, enforced, 305 U. S. 197, 230; *Montgomery Ward & Co. v. National Labor Relations Board*, 107 F. (2d) 555, 558-559, 560-564 (C. C. A. 7); *Paces Co. v. National Labor Relations Board*, 118 F. (2d) 937, 942 (App. D. C.), certiorari denied, 313 U. S. 595.

¹¹ *Matter of Ford Motors (Dallas)*, 25 N. L. R. B. 322, enforced as to this point, 119 F. (2d) 326, 327 (C. C. A. 5); *Matter of Goodyear Tire & Rubber Co.*, 21 N. L. R. B. 306, 447, enforced, 129 F. (2d) 661 (C. C. A. 5); *National Labor Relations Board v. General Motors Corp.*, 116 F. (2d) 306, 309 (C. C. A. 7); *Republic Steel Corp. v. N. L. R. B.*, 107 F.

Congress itself, in recognition that disclosure of the identity of union adherents endangers the free exercise of employee rights guaranteed in the Act, provided in Section 9 (c) for the safeguarding of anonymity by authorizing the Board to take a "secret ballot" to determine whether a majority of the employees in a particular unit desire to be represented by a union. In its Second Annual Report the Board announced (p. 110), quoting from its decision in *Matter of Samson Tire & Rubber Corp.*, 2 N. L. R. B. 148, that it was already "the established policy of the Board not to compel the union to produce . . . membership rolls for examination lest its members be exposed to possible discrimination by the

(2d) 472, 474 (C. C. A. 3), certiorari denied, 309 U. S. 684; *National Labor Relations Board v. Elkland Leather Co.*, 114 F. (2d) 221, 223 (C. C. A. 3), certiorari denied, 311 U. S. 705; *National Labor Relations Board v. Newberry Lumber & Chemical Co.*, 123 F. (2d) 831, 835 (C. C. A. 6); *National Labor Relations Board v. Sunshine Mining Co.*, 110 F. (2d) 780, 786, 791 (C. C. A. 9), certiorari denied, 312 U. S. 678; *National Labor Relations Board v. Weirton Steel Co.*, 135 F. (2d) 494, 495-496 (C. C. A. 3); *National Labor Relations Board v. Tennessee Products Co.*, 134 F. (2d) 486 (C. C. A. 6); *National Labor Relations Board v. New Era Die Co.*, 118 F. (2d) 500, 504 (C. C. A. 3); *Reliance Mfg. Co. v. National Labor Relations Board*, 125 F. (2d) 311, 319 (C. C. A. 7); *Eagle-Picher Mining & Smelting Co. v. National Labor Relations Board*, 119 F. (2d) 903, 910 (C. C. A. 8).

employer."¹⁰ And the Board and the courts have invariably held that attempts by employers to ascertain the identity of union organizers and adherents, whether by questioning of employees,¹¹ by the use of labor spies,¹² by conducting straw

¹⁰ Compare the statement of the United States Circuit Court of Appeals for the Fourth Circuit in *Brotherhood of Railway & Steamship Clerks v. Virginian Ry. Co.*, 125 F. (2d) 853, 858: "Certainly the Board should no more have given publicity to the names of those who had given authorization cards to the [union], and thus have subjected them to the danger of reprisal or discrimination, than it should have disclosed the votes of those participating in an employees' election."

¹¹ See, e. g., *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514, 518, 520; *National Labor Relations Board v. Arcedo Sunshine Co.*, 73 App. D. C. 128, 118 F. (2d) 49, 50, certiorari denied, 313 U. S. 567; *National Labor Relations Board v. William Davies Co.*, 135 F. (2d) 479, 181 (C. C. A. 7), certiorari denied, 320 U. S. 770; *Terrakona Bus Co. v. National Labor Relations Board*, 119 F. (2d) 480, 483 (C. C. A. 8); *National Labor Relations Board v. Bryzner Tanning Co., Inc.*, 141 F. (2d) 62 (C. C. A. 1); *National Labor Relations Board v. Quality Art Variety Co.*, 127 F. (2d) 903, 905 (C. C. A. 2); *National Labor Relations Board v. Trojan Powder Co.*, 135 F. (2d) 337, 339 (C. C. A. 3), certiorari denied, 320 U. S. 768; *American Fuka Corp. v. National Labor Relations Board*, 119 F. (2d) 60, 63 (C. C. A. 4); *National Labor Relations Board v. Brown Paper Mill Co.*, 133 F. (2d) 988, 989 (C. C. A. 5); *Corvus Illinois Glass Co. v. National Labor Relations Board*, 123 F. (2d) 670, 672-673 (C. C. A. 6), certiorari denied, 316 U. S. 602; *National Labor Relations Board v. Aluminum Goods Mfg. Co.*, 125 F. (2d) 333, 335 (C. C. A. 7); *National Labor Relations Board v. J. G. Roswell Co.*, 136 F. (2d) 585, 590 (C. C. A. 9); *Public Gas & Fuel Co. v. National Labor Relations Board*, 118 F. (2d) 304, 307 (C. C. A. 10).

¹² See cases cited, *supra*, note 9, p. 23.

polls,¹⁵ or by inquiring of the Chief of Police,¹⁶ are violative of the rights guaranteed in Section 7 of the Act.

By requiring all paid representatives of labor organizations, employees as well as non-employees, to register before soliciting members for their organization, the Texas statute impairs the rights guaranteed by the Act and threatens their exercise in a manner which, if attempted by employers, would constitute an unfair labor practice. Registration as provided by the statute immediately discloses to hostile employers the identity of the most prominent representatives of the Union and makes them ready targets for reprisal.¹⁷ Where the registrant is employed at

¹⁵ *International Ass'n. of Machinists v. N. L. R. B.*, 110 F. (2d) 29, 37 (App. D. C.), aff'd., 311 U. S. 72, 76 ("strange straw vote" * * * "going from man to man, asking his preference between A. F. L. and C. I. O., recording the 'votes' by tally mark on his sheet of paper"); *N. L. R. B. v. Colten*, 105 F. (2d) 179, 181-182 (C. C. A. 6) (semble); *N. L. R. B. v. New Era Die Co.*, 118 F. (2d) 500, 503-504 (C. C. A. 3) ("employer-sponsored 'poll'"); *N. L. R. B. v. Burry Biscuit Corp.*, 123 F. (2d) 540, 542, 543 (C. C. A. 7); *N. L. R. B. v. Harbison-Walker Refractories Co.*, 135 F. (2d) 837, 838 (C. C. A. 8).

¹⁶ *Matter of Aguilines, Inc.*, 2 N. L. R. B. 1, 6-7, enforced, 87 F. (2d) 146, 152 (C. C. A. 5).

¹⁷ It is clear that the applications for registration cards filed with the Secretary of State pursuant to the statute immediately become matters of public record and as such may be perused by any interested person, including employers. This was unquestionably the intention of the state legislature for while the statute expressly provides that finan-

the plant, disclosure of his identity makes him vulnerable to discrimination and discharge. Where he is not employed at the plant, disclosure of his position is an equally effective barrier to self-organization; employees would hesitate to associate with or consult him about the exercise of their rights, since by so doing they would identify themselves as union adherents. In small communities the employer's influence may be so great as to result in ostracism of the organizer and consequent disruption of all organizational activity.¹⁸ In sum the Texas statute makes it impossible for employees who receive financial compensation from a union to engage in

cial reports to be filed by unions pursuant to Section 3 of the statute are to be "available only to the Secretary of State, the Commissioner of Labor Statistics and the Attorney General * * * [and] to grand juries and judicial inquiries in legal proceedings," there is no provision whatever for maintaining secrecy with respect to applications for organizers' cards pursuant to Section 5.

¹⁸ See, e. g., *National Labor Relations Board v. Elkland Leather Co.*, 114 F. (2d) 221, 223 (CCA 3), certiorari denied, 311 U. S. 705; *Bethlehem Steel Co. v. National Labor Relations Board*, 120 F. (2d) 641, 646, 650 (App. D. C.); *Reliance Mfg. Co. v. National Labor Relations Board*, 125 F. (2d) 311, 317 (CCA 7); *National Labor Relations Board v. General Motors Corp.*, 116 F. (2d) 306, 310 (CCA 7); *Republic Steel Corp. v. National Labor Relations Board*, 107 F. (2d) 472, 475-476 (CCA 3), certiorari denied, 309 U. S. 684; *National Labor Relations Board v. Newberry Lumber & Chemical Co.*, 123 F. (2d) 831, 835 (CCA 6); *National Labor Relations Board v. New Era Die Co.*, 118 F. (2d) 500, 504 (CCA 3); *National Labor Relations Board v. Sunshine Mining Co.*, 110 F. (2d) 780, 786 (CCA 9), certiorari denied, 312 U. S. 678.

the organizational activities which the federal Act protects without exposing themselves or those with whom they associate to employer reprisal. A state cannot contrary to federal policy compel employees to take that risk.

In operation, the Texas statute not only discloses the identity of union adherents to employers, but also advises them when organizational activities among their employees begin. It is a common practice of employees, once the nucleus of an organization has been formed, to compensate one or more of their fellows for performing tasks incident to the growth of the organization. Such employees immediately assume the status of "labor organizers" under the Texas statute and must therefore register before they can continue to solicit members. (R. 74.) Obviously, their registration pursuant to the command of the statute notifies the employer that organizational activity is in progress at his plant and thus enables him promptly to adopt measures to defeat the movement at its weakest stage.

In many circumstances, of course, a requirement of disclosure is an appropriate and valid form of state regulation. Cf. *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63, cited by the court below (R. 321-322). But the challenge to the regulation here is not predicated on its lack of reasonableness under the due process and equal protection clauses. We are dealing with a question of consistency with federal policy expressed in federal legislation. Moreover, the case does not in-

volve the broad issue of compulsory disclosure of union finances, officers, and the like, but the much narrower issue of disclosure of the identity of organizers—a matter intimately related to the free choice of employee representatives, which Congress has expressly authorized to be protected by individual nondisclosure even at the stage of determining whether a majority have chosen a representative. It is a subject, furthermore, which must be examined historically and not abstractly. It must be examined as was the state requirement of registration of aliens in *Hines v. Davidowitz*, 312 U. S. 52. There the Court, referring to Congressional history, observed (p. 71, n. 32): “The requirement that cards be carried and exhibited has always been regarded as one of the most objectionable features of proposed registration systems, for it is thought to be a feature that best lends itself to tyranny and intimidation.”

It was not the view of Congress that upon the enactment of the federal Act the repressive and hostile environment in which labor organizing was commonly carried on in the United States would at once be dissipated. The Board's experience shows that labor organizations still commonly encounter the same hazards. And respondent has not contended that in the State of Texas acceptance of organizational activity has advanced beyond that in other parts of the country.¹⁹ In any

¹⁹ Within the two past years the Board has issued twenty-two Decisions and Orders (apart from cases concluded by

event, the federal Act must be administered, and its guarantees protected, on a uniform nation-wide basis, cf. *National Labor Relations Board v. Hearst Publications, Inc.*, 322 U. S. 111, and it is for Congress to determine when the disclosure of the identity of labor organizers to employers shall happily have become compatible with the exercise by employees of their right of self-organization.²⁰

settlement) in which it found that employees in the State of Texas had been interfered with, restrained, and coerced in the exercise of their rights under the Act in violation of Section 8 (1), and had been discriminated against for the purpose of discouraging membership in labor organizations in violation of Section 8 (3). These cases involve only unfair labor practices of the type which typically occur at the very inception of organizational activity and before a union has succeeded in gaining a foothold in the plant. They do not include cases in which employers have maintained company unions in violation of Section 8 (2) or have refused to bargain with unions within the meaning of Section 8 (5), the type of unfair labor practices most often associated with later stages of organizational activities.

²⁰ The Senate Committee on Education and Labor in a report filed June 5, 1944, stated (S. Rep. 398, part 5, 78th Cong., 2d Sess., p. 1694), with reference to recent state legislation:

"It is, however, our conclusion that all such proposed regulatory measures must and should be examined closely and deliberated upon carefully to make sure that under cover of regulation in the public interest an organized antiunionism is not foisting upon us legislation that will destroy or stifle the rights of labor that are fundamental to an economic democracy.

"We must distinguish between regulation *in the public interest and in the interest of antiunion employers*. Such insistence will result from public awareness rather than the self-imposed discipline of antiunion employers who provide the backbone of support for this type of law.

"It is our further conclusion that antiunion employer

(b) *Timeliness*.—The Texas statute deprives employees of rights protected by the National Labor Relations Act and impedes effectuation of the Act's basic policies in yet another respect. Under the Act, employees are guaranteed full freedom to engage in organizational activities at all times. The Texas statute, by preventing employees and their representatives from exercising those rights until a registration card shall have been issued to them by the Secretary of State, impairs that freedom. Nor is this impairment a negligible one. A registration card cannot be issued until the applicant has secured adequate credentials from the union, has obtained evidence of citizenship, has prepared an application and had it notarized and has dispatched the applica-

groups, which, after seven years, refuse to accept finally the principles of industrial democracy, have sought and will continue to seek to shackle the rights of labor through legislation purporting to regulate labor union activities in the public interest. It is a bold but logical tactic for those who feel constrained by a national law that protects from coercion by employers the right of employees to organize and bargain collectively. Such tactics hold great dangers for the rights of labor and industrial democracy."

The National Labor Relations Board has recently had occasion to note the conflict of such legislation with the rights guaranteed by the Act. *Matter of Eppinger & Russell Co.*, 56 N. L. R. B. 1259; *Matter of Tampa Electric Co.*, 56 N. L. R. B. 1270; *Matter of Wisconsin Gas & Electric Co.*, 57 N. L. R. B., No. 53.

See Dodd, *Some State Legislatures Go To War—On Labor Unions*, 29 Iowa L. Rev. 148 (1944); Owens, *A Study of Recent Labor Legislation*, 38 Ill. L. Rev. 309 (1944).

tion, with credentials attached, to the Secretary of State (R. 46-47, 75). The applicant is not authorized to begin to exercise his rights under the federal Act even after these steps have been taken. Upon receipt of the application the Secretary of State must examine it to determine whether it has been properly filled out; he must also, if doubt is raised, investigate the credentials presented to determine whether the applicant has "authority to act as Labor Organizer for the labor union" (R. 47) which he claims to represent, whether the applicant is in fact a citizen of the United States, whether the applicant has been convicted of a felony, and, if so, whether his rights of citizenship have been "restored by proper authority" (R. 13). The Secretary of State testified in the instant case that he had already rejected 40 or 50 applications "where they failed to give all the information or failed to sign the application or failed to attach the credentials or some other such defect as that" (R. 14). Assuming sympathetic and efficient administration, a considerable period of time must elapse between presentation of the application and receipt of an organizer's card from the Secretary of State, during which the applicant is prohibited from advising or soliciting employees to join a labor organization.

The detrimental effects of such a time limitation upon organizational activities are readily apparent. The desire to organize often manifests

itself as a response to what employees consider unjust treatment by their employer. Sometimes their reaction may take the form of a stoppage from work.²¹ To organize effectively under these circumstances the employees often call upon the representatives of a national labor organization which may have no headquarters in the state, or whose agents in the state may not be immediately

²¹ In *Matter of Indianapolis Glove Co.*, 5 N. L. R. B. 231, 236, the Board stated: "The nine tippers were unorganized and could not be represented by a labor organization in the presentation of their grievances. The stoppage engaged in by them was a spontaneous expression of discontent staged for the purpose of bringing to the attention of the [employer] the grievance concerning wages * * *" "Long prior to the time that the term 'sit-down strike' became common parlance, stoppages such as that participated in by the nine tippers were frequent occurrences among unorganized laborers in the clothing and other industries. A stoppage was considered by the employees as the safest method of calling attention to their grievances without placing responsibility for leadership upon individuals. Without a labor organization or effective bargaining agency to represent them the fear of individual employees to assert leadership in the presentation of grievances for a group was usually well-founded." *International Ladies' Garment Workers' Union, Handbook of Trade Union Methods* (New York, 1937), p. 38: "Sometimes spontaneous strikes occur. Workers become so indignant over an incident or series of incidents in the shop that they leave their machines and walk out without any pre-arranged plan and only afterward call upon a union to take them in. This situation presents special difficulties, since organization must be perfected among an undisciplined group while the strike is going on." See, also, Chicago Joint Board, *Amalgamated Clothing Workers of America, The Clothing Workers of Chicago* (Chicago, 1922), p. 259; Editorial Research Reports, Volume 1, "Control of the Sit Down Strikes" (March 25, 1937), pp. 228-229.

available, for counsel and assistance in setting up their organization, in securing the participation of their fellow workers, and in adjusting their grievances. In this situation, the ability of the representative summoned from outside the state to aid the employees in the exercise of their rights, to contribute his knowledge and experience to the settlement of the dispute and thus to facilitate resumption of production, depends in large measure upon the promptness with which he is able to answer their call. If the workers are unable promptly to consult with and obtain the services of an informed specialist when their need arises, the result may well be dissipation of effort, internal dissension, prolongation of disputes, and consequent frustration of the policies of the Act. Yet, by virtue of the registration requirement, the employees, at the time they most need assistance, may be denied access to the only representatives of labor organizations who are qualified to assist them.

The time limitation is also disruptive of other aspects of organization. For example, should a group of employees in one plant call upon a fellow employee in an organized plant for aid in distributing organizational leaflets on a particular day, that employee, if he were compensated for his efforts, would become a "labor organizer" within the meaning of the statute (R. 74) and would be automatically disqualified from distributing the handbills until he had obtained an or-

ganizer's card from the Secretary of State. He would thereby effectively be precluded from participating in the organizing drive at a critical juncture in the exercise of the right of self-organization.

By impeding the presentation of pronunion views immediately prior to Board elections, while permitting unrestrained antiunion utterances, the Texas statute impairs the opportunity of employees to exercise the informed choice necessary to assure that Board elections accurately reflect their true desires. The Board will doubtless find it necessary, in the exercise of its power to protect the integrity of its election process, to mitigate the effects of the interference and inequality created by the Texas statute by postponing elections until qualified union spokesmen become eligible to present their views to the employees, or to set elections aside if they have been held under circumstances which deprived the employees of necessary information and advice.

The possibility of wholesale registrations in advance does not remove these restraints on timely organizing efforts. The broad definition of labor organizer, including those who are merely authorized and not specially employed to solicit members, the practice of cooperation between local and national groups, and between unions in different industries, and the practice of designating employees on the spot in emergency situations, render advance registrations of doubtful practicality.

The problem must be appraised, of course, on the assumption that every state, if not each county and city, has an equal right to adopt the system here in question.

3. *Interests protected by the state statute.*—In determining whether local regulations may be sustained consistently with the commerce clause of the Constitution, this Court has observed that there must be a weighing of the interests protected by the local law as against its interference with the interests given protection by the commerce clause. *Parker v. Brown*, 317 U. S. 341, 362-363. In considering whether a state statute may be applied consistently with an Act of Congress, a similar analysis seems appropriate. We therefore examine the state statute to determine whether the interferences with the effectuation of the national policy, already discussed, are disproportionate to the protection of the legitimate concerns of the state.

The state court regarded the statute as a measure designed against fraud both in the collection of dues and in representations concerning labor unions. It may be assumed that there are measures which the states may take consistently with the National Labor Relations Act, to punish or to protect against fraudulent representations and to insure financial responsibility on the part of those who solicit or handle funds, including those of unions. The present statute, however, does not deal directly either with the solicitation or col-

lection of funds or with fraudulent misrepresentations. Its impact on this subject matter is at most an indirect one. The statute, therefore, raises the question of the limits to which the state may go, in view of the federal Act, to achieve its ends thus indirectly. If, for example, a state were to limit the number of union organizers in a plant to one or two, on the ground that greater responsibility would be secured with respect to funds and representations, it cannot be doubted that the restriction would be inconsistent with the guarantees of the federal Act.

When we turn to the present statute we find that its relation to the collection of union dues is remote. The registration requirement is not drawn in terms of the collection of funds. Paid "labor organizers," as the Secretary of State of Texas has officially ruled, are entirely free to collect dues or engage in any other activity on behalf of a union without becoming subject to the registration requirement provided they "wholly abstain * * * from the solicitation of memberships" (R. 74, 12-13). And, of course, impostors as well as unpaid, bona fide representatives of labor organizations, who are not subject to the registration requirement at all, remain entirely free to collect dues. Nor is there any such factual relation between the solicitation of membership and the collection of dues as would tend to make the regulation of solicitation, despite its effect on federal rights, a permissible method of controlling financial fraud. The dues

collection function is in large part distinct from the organizing function and is most frequently performed by entirely different persons. The objective of securing members for a labor organization is to achieve the status of exclusive bargaining representative authorized to secure collective bargaining agreements with employers. The attainment of that objective does not depend upon the payment of dues since the right of a labor organization to represent employees depends entirely upon whether the employees have authorized the organization to represent them and not on whether they have paid dues.²² Indeed, it is fairly common practice during the period of organization for unions to waive dues obligations until collective bargaining relationships have been established.²³

²² *National Labor Relations Board v. Bradford Dyeing Ass'n*, 310 U. S. 318, 338-339; *National Labor Relations Board v. Chicago Apparatus Co.*, 116 F. (2d) 753, 756 (C. C. A. 7); *National Labor Relations Board v. Somerset Shoe Co.*, 111 F. (2d) 681, 687 (C. C. A. 1); *National Labor Relations Board v. National Motor Bearing Co.*, 105 F. (2d) 652, 660 (C. C. A. 9). See National Labor Relations Board, *Second Annual Report* (Gov't. Print. Off., 1937), p. 92.

²³ Many C. I. O. unions follow this practice; see cases cited, note 22, *supra*. The practice of the United Retail, Wholesale, and Department Store Employees of America (C. I. O.) has been summarized as follows: "No dues or initiation fees are collected from members until contracts are signed with [the] employer. It is not an uncommon practice in an organizing campaign for a new union to waive charges in this manner." 572 *Business Week*, p. 36 (August 17, 1940). As to the similar practice of the United Steel Workers of America, see Brooks, Robert R. R., *As Steel Goes* (1940), p. 117.

The second rationale for the legislation suggested by the state court is that it tends to protect employees from signing a membership card at the instance of a person who claims to be the representative of a labor organization which he does not in truth represent. We may assume that such danger of misrepresentation exists, although we are not aware that the state legislature had any evidence indicating that persons have solicited membership in labor organizations claiming to represent the organizations when in fact they did not; nor are we aware of any case in the history of the Board in which an employee's membership in a labor organization was challenged on the ground that the person who solicited him to join misrepresented himself to be a representative of the organization. If such a danger exists, the means adopted by the statute to meet it entails an interference with freedom of solicitation which is quite disproportionate to the protective effect of the statute. Bona fide representatives of labor organizations are not required to secure registration cards prior to soliciting members, provided they receive no financial compensation from the organization they represent. Consequently, when an employee is approached and asked to join a labor organization by a person who does not carry an organizer's card, he has no way of determining whether or not he is being solicited by an authorized representative of the organization.

The third rationale suggested is that it tends to protect employees against misrepresentation of

the functions and purposes of labor organizations which they are asked to join. The Texas statute contains no provision dealing specifically with fraud or misrepresentation. Nor does the registration provision in itself erect a greater safeguard against misrepresentation concerning the functions and purposes of the organization than existed prior to the statute. There is no provision in the statute for revocation of cards or any other sanction against misrepresentation.

The provision which limits the issuance of organizers' cards to citizens was not relied on by the court below, nor could it have been. This provision could not, for two reasons, serve to support the state law against the objection that it is inconsistent with the National Labor Relations Act. In the first place, the provision with respect to aliens, like that with respect to persons convicted of felony, does not simply prevent members of the designated class from acting as paid labor organizers. It imposes restrictions upon the activities, and requires disclosure of, all organizers; and it is thus, for the reasons already considered, incompatible with the guaranties of the federal Act. Secondly, the federal Act guarantees freedom of self-organization to employees without regard to citizenship. The decisions of the Board reveal that the problem of the self-organization of alien workers is a substantial one in the grant of the right of collective bargaining to all employees protected by the National Labor Relations Act. *Matter of Peyton Packing Company, Inc.*, 32 N. L. R. B. 595, enforced

142 F. (2d) 1009 (C. C. A. 5), petition for certiorari pending No. 298, this Term; *Matter of Lone Star Bag and Bagging Company*, 8 N. L. R. B. 244, 249, 251, 258; *Matter of Azar and Solomon*, 8 N. L. R. B. 1164, 1166-1167; *Matter of Logan and Paxton*, 55 N. L. R. B. 310, n. 12; *Matter of Edinburg Citrus Association*, 57 N. L. R. B., No. 174; cf. *Matter of Jefferson Lake Oil Company*, 16 N. L. R. B. 355, 370.

In sum, the registration requirement of the state law imposes obstacles to the exercise of federal rights which are disproportionate to the possible protection afforded the legitimate interests of the state. Despite the wide latitude which the state would otherwise have in devising measures to meet local problems, the existence and supremacy of the federal statute require, it is believed, the conclusion that the provisions of the state law here involved cannot be sustained.

CONCLUSION

For the reasons stated it is respectfully submitted that the provisions of the state law here in question are inconsistent with the National Labor Relations Act.

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SEPTEMBER 1944.

APPENDIX A

The pertinent provisions of House Bill No. 100, Act 1943, 48th Legislature, Chapter 104, page 180 (Vernon's Annotated Texas Statutes, Article 5154a) are as follows:

SECTION 1. *Preamble of Public Policy.*— Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

SEC. 2. Definitions * * * (c) "labor organizer" shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union; * * *

Sec. 4a. [Limitation on Union Officials.] It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This Section shall not apply to a person

who may have been convicted of a felony and whose rights of citizenship shall have been fully restored.

* * * * *

2. SEC. 5. *Organizers*.—All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation, "labor organizer"; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership.

APPENDIX B

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of com-

petitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choos-

ing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

SEC. 9.

* * * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the repre-

sentatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

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CHARLES ELMORE GROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM 1944

No. 14

R. J. THOMAS,
Appellant,

against

H. W. COLLINS, Sheriff of Travis County, Texas.

BRIEF ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,

ARTHUR GARFIELD HAYS,
Counsel.

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CARL RACHLES,
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of the Texas Bar,

Of Counsel.

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Supreme Court of the United States

OCTOBER TERM 1944

No. 14

R. J. THOMAS,
Appellant,

against

H. W. COLLINS, Sheriff of Travis County, Texas.

BRIEF ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

Statement of the Case

This is an appeal from a decision of the Supreme Court of Texas, 174 S. W. (2d) 958, which upheld an order of the District Court of Travis County, Texas. This order found appellant Thomas guilty of contempt of court for violating an injunction issued by that Court and prohibiting appellant Thomas from violating the provisions of Art. 5154a (Vernon's Annotated Texas Statutes). Appellant properly raised the question of the constitutionality of these provisions in the Courts below.

Statement of Facts

The appellant, Mr. R. J. Thomas, is President of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, and one of the Vice-Presidents of the Congress of Industrial Organizations. A resident of the State of Michigan, he came to Texas to address workers of the Humble Oil Company at Houston on September 23, 1943. Before doing so, he publicly announced that he would solicit membership in the Oil Workers International Union at the meeting without first obtaining an organizer's card as required by Section 5, of H. B. 100 (Art. 5154a, Vernon's Annotated Texas Statutes). A preliminary restraining order was issued on September 22, 1943 to restrain Mr. Thomas from "soliciting memberships" in the O.W.I.U. unless he complied with the law. (See Exhibit A.) Mr. Thomas gave the speech as advertised and on September 25th was found guilty of contempt of court for "violation of the law and of the order of this court," and sentenced to three days imprisonment and a \$100 fine. A petition for a writ of habeas corpus was thereafter filed in the Texas Supreme Court, the denial of which resulted in the appeal to this Court.

Interest of the American Civil Liberties Union

This brief is filed on behalf of the American Civil Liberties Union as *amicus curiae*. The American Civil Liberties Union is a nation-wide, non-profit organization, whose members are lawyers and laymen vitally interested in the preservation of the fundamental personal rights guaranteed to individuals by the Constitution of the United States and of the various states.

We have filed this brief because it is our conviction that the statute and orders involved in this case present a clear violation of the guarantees of freedom of speech and assembly embodied in the Fourteenth Amendment.

I. Free discussion of industrial relations and trade unions is constitutionally protected by the 14th Amendment.

In a long line of recent cases, this Court has established and underscored the proposition that, because freedom of thought and communication are the fundamental liberties of a free society, the right of free discussion "is to be guarded with a jealous eye". *A. F. of L. v. Swing*, 312 U. S. 321, 325; see *Schneider v. State*, 308 U. S. 147, 161; *West Virginia State Board of Education v. Barnette*, 319 U. S. 624; *United States v. Carolene Products Co.*, 304 U. S. 144, 152, N. 4. In this trend towards close judicial scrutiny of possible limitations on civil liberties, one leading group of cases has established that free discussion of industrial relations is among the most important areas protected by constitutional guarantees. This was most explicitly recognized in *Thornhill v. Alabama*, 310 U. S. 88, 102-104:

"In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. *Hague v. C.I.O.*, 307 U. S. 496; *Schneider v. State*, 308 U. S. 147, 155, 162-63. See *Senn v. Tile Layers Union*, 301 U. S. 468, 478. It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an im-

portance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at state and federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations, such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger problem. • • •

“• • • It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society.”

While the *Thornhill* case specifically involved picketing to publicize the facts of a strike, the principle necessarily includes discussion of broader aspects of industrial relations and the structure of society—as the language above itself indicates. And in *Hague v. C.I.O.*, 307 U. S. 496, this Court expressly recognized as a constitutional right the discussion of the benefits of trade unionism and the National Labor Relations Act.

Thus this Court has already and explicitly declared that any attempts to limit free discussion of labor problems and industrial relations constitute violations of the Constitution of the United States.

II. The injunction and the contempt order were an unconstitutional attempt to prohibit appellant from freely discussing industrial relations and labor unions.

Mr. Thomas' actions here involved can theoretically be divided into three parts. The formal speech (R. 279-290) (1) contained a long general discussion of public affairs and the advantages of trade unionism, and (2) ended with a short appeal to the audience collectively to join up. And, (3) Thomas then solicited one Pat O'Sullivan to join the Oil Workers International Union (see R. 297). It is clear that the first part is protected by the doctrine developed in Point I; the second might be somewhat different, if it is separable; and while under this statute restriction of the third also infringes appellant's constitutional rights, this question need not be passed upon here.

The injunction and contempt orders in this case were broadly worded to cover solicitation of "members" (Cf. Exhibit A), and the appeal to the audience to join is inextricably bound up with the more general discussion of trade unionism. Since this restriction on the first and second parts presents so clear a violation of constitutional rights, the validity of the limitation on the third need not be decided.

Courts may not enjoin the peaceable discussion of union matters before a group of three hundred people. *Hague v. C.I.O.*, *supra*; compare *Thornhill v. Alabama*, as

quoted on page 3, *supra*. Mr. Thomas' speech is primarily a long discussion of the role of trade unions in the war, both in increasing war production and in providing mass support to ensure a fight against fascist elements all over the world. He also told of the protection provided by our courts (R. 286), and quoted from several recent decisions of this Court.

Yet every part of this speech in a proper sense was an effort on his part to create a favorable attitude toward this Union. Viewed as a whole, it presented a favorable picture of unions and union members (R. 286, 288-9). Mr. Thomas' urging of those present to join the Union only took meaning from the favorable things he said about unions and his comments upon public affairs. Under these circumstances, the injunction and the resulting contempt order applied to the whole speech. To apply the statute to such general discussion was an improper restraint upon freedom of speech and in violation of the due process clause of the Fourteenth Amendment.¹

III. The statute upon its face is an improper restriction upon the free discussion of industrial relations and labor unions and is therefore unconstitutional under the 14th Amendment to the Constitution.

While it is true the Texas Supreme Court has stated that the statute in question does not "vest unlimited discretionary power in the Secretary of State to grant or refuse a registration card * * *" (R. 324), nevertheless, the statute imposes unreasonable limitations upon one

1. "Soliciting union membership is in some respects * * * analogous to religious proselytizing or soliciting membership in a political party * * *" Dodd, *Some State Legislatures Go to War—On Labor Unions*, 29 Iowa Law Review 148 (Jan. 1944).

desiring to exercise what would otherwise be his constitutional right of freedom of speech.

It may properly be inferred from the opinion of the Texas Supreme Court that the Secretary of State has a real discretion, even if it may not be arbitrarily used. The Court in stating that the statute does not "vest unlimited discretionary power," obviously implies that the secretary has a discretion, which although limited is nevertheless actual. This is emphasized when the Court elsewhere states that "the act confers no unbridled discretion upon the Secretary." Again the inference is clear that there is some degree of discretion in that officer.

Any discretion to refuse a card to a prospective organizer, thus limiting the right of a union to organize, invalidates the statute. *Hague v. C.I.O.*, 307 U. S. 496; *Lovell v. Griffin*, 303 U. S. 44.

Apart from this discretion vested in the Secretary as appears from the Texas Supreme Court's opinion, the act is invalid for the further reason that even if the Secretary must issue the card in a proper case, he is given the authority to investigate whether or not the case is a proper one.

The statute and the Court's interpretation thereof are wholly unrealistic in view of the subject matter. The pretense is that the purpose of the act is merely administrative. The fact is that the statute is bound to cause delay—and sometimes long delay—before one can exercise his right to do something which is important only if done immediately. To hold up "persuasion" even for a few days often denies the right of "persuasion" and particularly is this true in the field of trade unionism.

Under the interpretations of the Attorney General of Texas (R. 291, 295) and of the Texas Court (R. 294, 295,

303, 304, 308, 309) before delivering a speech such as appellant's, it is necessary to make application and submit qualified credentials to a state officer. The applicant may not organize until his application is acted upon, for Section 5 of the act says, " * * * such organizer shall at all times, when soliciting members, carry a card, and shall exhibit the name when requested to do so by a person being * * * solicited for membership". Section 4 of the act provides " * * * organizers * * * shall be elected by a majority vote of the members present and participating; provided, however, that labor unions, if they so desire, may require more than a majority vote for the election of any officer, agent, organizer or representative and may take any such vote of the entire membership by mailed ballots." Since Section 5c of the act requires that labor organizers describe their credentials in the application, the Secretary of State has at least the duty to examine and verify them. With this necessity as an excuse, it is obvious that the Secretary of State may easily postpone final action on an application for weeks or even months. If correspondence to and fro is necessary, the size of Texas is an indication of how long this might drag out, even if the application were acted upon promptly. In the case where a strike occurs requiring an immediate increase of union organizers, it is quite possible that the Secretary of State may delay acting until the strike is over under his power to examine the credentials of the applicant to see whether they are in accordance with the provisions of Section 4 quoted above. There is nothing in the decision of the Texas Supreme Court which would remove this power of examination from the state officer, for the decision, itself, states "the act confers no unbridled discretion upon the Secretary of State to grant or withhold a registration card at his will, but makes it

his mandatory duty to accept the registration and issue the card *to all who come within the provisions of the act upon their good-faith, in compliance therewith*'. (Italics ours.) Nor could the applicant secure relief through the courts in this situation, for mandamus would not lie until it was clear that the Secretary of State was abusing his discretion.

We do not wish, at this time, to express any general opinion regarding the validity of legislation merely providing for disclosure or identification of persons acting as labor organizers as against a statute requiring a license. A consideration of this question is not necessary to a decision of this case. The situation in *City of Manchester v. Leiby*, 117 Fed. (2d) 661 (cert. den. 313 U. S. 562) upon which the Texas Supreme Court relies is in no way comparable to the facts in the case now before this Court. There, the ordinance merely provided for the registration of *any person* selling pamphlets or magazines in any street or public place within the city limits. There were no provisions as to the qualifications of those who would require the necessary badge, nor was there any discretion to be exercised.

We believe that the requirement of an identification card as a condition to organizing, even if no discretionary power is vested in the issuing authority, but which requires an examination and verification of the applicant's credentials becomes merely a subterfuge to hamper what would otherwise be a right to discuss freely labor organizations and industrial relations and is unconstitutional under the Fourteenth Amendment to the Constitution.

Conclusion

The present case illustrates the dangers which are inherent in legislation of the kind here under attack. Why,

for example, may we ask, did the state seek to enforce a prior restraint upon speech when it could easily have waited to see whether Mr. Thomas' address in fact violated the statute?

The injunction provisions of the act are an open invitation to its misuse by the authorities to limit free speech. It is an attempt to do indirectly what cannot be done directly. Sections 4, 5 and 12 "restore a system of license and censorship in its baldest form." See *Lovell v. City of Griffin*, 303 U. S. 444.

Under this act, one may try to dissuade others from joining unions without coming within the purview of the statute, yet if he does the opposite without the necessary card, obtainable in many instances not without great difficulties, and subject to the discretion of an administrative officer, he may be restrained. We think that the purpose and effect of this law is to hamper free speech and the exercise by labor of its constitutional rights.

We respectfully submit that the statute and the orders issued thereunder be declared unconstitutional.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,

ARTHUR GARFIELD HAYS,
Counsel,

WALTER FRANK,
PAUL O'DWYER,
CARL RACHLIN,
of the New York Bar,

GEORGE CLIFTON EDWARDS,
of the Texas Bar,

Of Counsel.

Exhibit A**INJUNCTION****FIAT**

On this, 22nd day of September, 1943, there was presented to me the plaintiff's sworn petition for temporary restraining order in the above styled and numbered case and it appearing that the defendant Thomas has announced publicly to the press that he will violate the Texas law relating to soliciting memberships in a labor union without an organizer's card at a meeting to be held Thursday night, September 23, 1943, at Goose Creek, Harris County, Texas, and it appearing from said petition that said defendant is a "labor organizer" within the meaning of that term as used in House Bill No. 100, Acts of the 48th Legislature, 1943, and that said defendant will violate said law unless restrained from doing so, * * * and the Court having found from [fol. 203] the sworn petition and statements of counsel that irreparable injury will result to plaintiff unless the relief is granted and that plaintiff is entitled to the relief prayed for;

It is, therefore, Ordered, Adjudged and Decreed that R. J. Thomas be and he is hereby restrained and enjoined from soliciting memberships in Local Union No. 1002 of the O. W. I. U., and members for Local Union No. 1002 of the O. W. I. U. and from soliciting memberships in any other labor union affiliated with the C.I.O. and members of any other labor union affiliated with the C.I.O. while said defendant is in Texas without first obtaining an organizer's card as required by law.

It is Ordered that this fiat and a copy of plaintiff's petition be served forthwith on said defendant Thomas and that he be and appear before this Court at 10:00 A. M. on the 25th day of September, 1943, in the Court House in Travis County, Texas, and then and there show cause why a temporary injunction shall not issue as prayed for.

This temporary restraining order is issued at 4:00 P. M., Wednesday, September 22, 1943, and unless extended it shall expire within ten days from this date.

J. HARRIS GARDNER, Judge,
53rd District Court,
Travis County, Texas.

MOTION FOR CONTEMPT

The defendant R. J. Thomas knowingly and wilfully and without justification or excuse violated the aforesaid order of this court and the writ of temporary restraining order as follows, to-wit:

(1) That on the 23rd day of September, 1943, at the City Hall in Pelly, Harris County, Texas, the said R. J. Thomas, without procuring an organizer's card as required by law of labor organizers and without making application to the Secretary of State for such a card, did at said time and place solicit Pat O'Sullivan, a resident of Bay Town, Texas, and an employee of the Humble Oil & Refining Company's plant at Bay Town to join a local union of the Oil Workers International Union, which said union is affiliated with the Congress of Industrial Organizations of which said R. J. [fol. 207] Thomas is Vice-President. The said O'Sullivan at said time was not a member of the local union of the Oil Workers Interna-

tional Union and said R. J. Thomas then and there did take his application to become a member, all in violation of this court's order and the writ of temporary restraining order issued pursuant thereto.

(2) At said time and place R. J. Thomas in violation of this court's order did openly and publicly solicit an audience of approximately 300 persons, many of whom were not members of the Oil Workers International Union or any other C.I.O. union, to then and there join and become members of said Oil Workers International Union. Said R. J. Thomas at said time and place stated publicly that he made said solicitations in his capacity as Vice-president of the C.I.O. and that he was duly authorized by the said C.I.O. to solicit memberships in the Oil Workers International Union, and that it was his duty to assist in the organization of the Oil Workers International Union which is affiliated with the C.I.O. The said R. J. Thomas at said time and place publicly solicited all employees of the Humble Oil & Refining Company's plant at Bay Town, Texas, many of whom were present at said meeting and were not members of the Oil Workers International Union, to join the local Oil Workers International Union at that refinery, said Oil Workers International Union being affiliated with the C.I.O. At said time and place said R. J. Thomas did not have and had not applied for an organizer's card, as required by Section 5 of House Bill No. 100, Acts of the 48th Legislature of 1943.

Plaintiff states that the acts of R. J. Thomas above alleged were in open and flagrant violation of the order of this court and the writ issued pursuant thereto and were knowingly made by said defendant in violation of

this court's order and writ and said acts constitute contempt of [fol. 208] this court and should be punished by appropriate order.

JUDGMENT IN CONTEMPT

Be it Remembered, that on this the 25th day of September, A.D. 1943, there came on for trial the motion of the State of Texas in the above entitled and numbered cause, seeking to have R. J. Thomas held in contempt of court, for violating this court's temporary restraining order heretofore granted on the 22nd day of September, A.D. 1943, in the above entitled and numbered cause, and it appearing to the court that the same is in the nature of an information for constructive contempt of this court, and the defendant, R. J. Thomas, having been duly served with a copy of said temporary restraining order, and having duly waived service of the writ of attachment to appear and show cause why he should not be held in contempt of this court, appeared in person and by his attorney and the State appeared by and through the Attorney General of Texas, and all parties having announced ready for trial and the court having heard the pleadings and evidence is of the opinion and so finds that the defendant, R. J. Thomas, was on the 23rd day of September, A.D. 1943, a labor organizer for pecuniary consideration and that he had not applied for an organized card as required by Section 5 of the House Bill No. 100, and that he, the said R. J. Thomas, did in Harris County, Texas, on the 23rd day of September, A.D. 1943, violate this court's temporary restraining order heretofore issued injoining and restraining him, the said [fol. 225] R. J. Thomas, from soliciting members to join the Oil

Workers International Union, said union being affiliated with the Congress of Industrial Organizations without first having applied to the Secretary of State, of the State of Texas, for an organizer's card as required by law.

It is Therefore Ordered, Adjudged and Decreed by the court that the defendant, R. J. Thomas, is guilty of contempt of this court as charged in the information filed herein, and it is the judgment of this court that the defendant, R. J. Thomas, is so in contempt of this court for the violation of the law and of the order of this court on the 23rd day of September, A.D. 1943, and he is so adjudged, and his punishment is hereby assessed at imprisonment in the county jail of Travis County, Texas, for a period of three days and a fine of \$100.00.

It is Therefore Ordered, Adjudged and Decreed by the court that the State of Texas do have and recover from the defendant, R. J. Thomas, a fine in the amount of \$100.00, and all costs of this proceeding, and that execution may issue against the property of said defendant for the amount of said fine and costs, and that a capias shall forthwith issue herein, commanding the sheriff to arrest the said defendant, R. J. Thomas, to place him in jail in Travis County, Texas, and there safely to keep him for a period of three full days from the date hereof and until said fine and costs are fully paid or until said fine and costs are satisfied by confinement in the said jail for the period of time that will satisfy the same at the rate allowed by law.

J. HARRIS GARDNER (Signed), Judge Presiding.

OCT 9 1944

CHARLES E. WERE OROPLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1943

No. 69

R. J. THOMAS,

Appellant,

vs.

H. W. COLLINS, Sheriff of Travis County, Texas.

**BRIEF ON BEHALF OF THE NATIONAL FEDERATION FOR
CONSTITUTIONAL LIBERTIES, AS AMICUS CURIAE**

NATIONAL FEDERATION FOR
CONSTITUTIONAL LIBERTIES

By NATHAN WITT,
Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1913

No. 569

R. J. THOMAS,

Appellant,

vs.

H. W. COLLINS, Sheriff of Travis County, Texas.

BRIEF ON BEHALF OF THE NATIONAL FEDERATION FOR CONSTITUTIONAL LIBERTIES, AS AMICUS CURIAE

This brief is respectfully submitted amicus curiae on behalf of the National Federation for Constitutional Liberties, a non-profit, voluntary, unincorporated association devoted to the protection of the liberties guaranteed by our fundamental law.

Written consent to the filing of this brief has been obtained in accordance with the rules of this Court governing the filing of briefs amicus curiae. The Federation believes that the Texas statute herein involved affecting the rights of labor organizations and those who solicit workers to join a trade union seriously encroaches upon basic constitutional liberties; that the prohibitions and regulations contained in the Texas statute are in conflict with rights guaranteed by the Constitution of the United States.

The statute here under attack limits the full freedom of association which workers should enjoy; it infringes on the basic freedoms of speech, press and assembly; does violence to the concept of equal protection of the laws guaranteed by the Fourteenth Amendment of the Federal Constitution; deprives persons of their liberty and property without due process of law in violation of the Fourteenth Amendment; and deprives some citizens of the United States and of the State of Texas of privileges and immunities secured to other citizens of the United States and of the State of Texas.

Moreover, the Federation believes that in a more profound sense the Texas statute is inimical to the best interests of the Nation for it seriously curtails the rights of men and women in trade unions who are today making a tremendous and vital contribution to the war effort. The record of organized labor in various phases of the war effort essential on the production front, in civilian defense, in consumer activities, in war relief and in many other related field, has been such a splendid one that attempts to curtail the liberties of workers should, it is submitted, be carefully scrutinized by this Court.

It is not intended here to detail at length the origin and development of labor organizations. It may be fairly stated that labor organizations exist because workers desire to protect themselves and further their interests in their relations with employers. Labor organizations are primarily assemblages of working people having similar problems with common objectives. They are assemblages of working men and women who have come together to discuss their views and ideas, educate themselves on the basis of their experience and to agree upon common action intended to solve their mutual problems.

This Court has expressly recognized that the activities of labor organizations involve the exercise of the rights of peaceful assembly, freedom of speech, and freedom of press. *Thorhill v. Alabama*, 310 U. S. 88; *Carlson v.*

California, 310 U. S. 106; *Hague v. Committee for Industrial Organizations*, 307 U. S. 496; *Schneider v. State of New Jersey*, 308 U. S. 147.

It is submitted that a necessary consequence of these fundamental rules of law requires the holding that those workers who solicit members for their trade union are entitled to exercise that element of speech or press without limitation and without prior restraint. The criterion is not the degree of the burden imposed upon those who solicit membership but rather whether the power exists which the State has sought to assert. *Grasjean v. American Press Company*, 297 U. S. 233.

If the Texas statute is permitted to stand, it will operate in direct conflict with the National Labor Relations Act, a law of the United States. The National Labor Relations Act was intended by Congress to protect the rights of employees to organize for the purpose of bargaining collectively with their employers. If the provisions of the Texas statute are permitted to stand workers will be unable in certain instances to avail themselves of the rights conferred by the National Labor Relations Act unless they comply with the preconditions imposed by the Texas statute. The National Labor Relations Act contains no such preconditions and a State statute which is in conflict with this Federal law must be declared invalid.

Further, the Federation supports the view that the Texas statute denies to members of labor unions the equal protection of the law guaranteed by the Fourteenth Amendment of the Constitution of the United States. It is well established that a statute which unfairly or unreasonably discriminates for or against persons or groups of persons similarly situated results in an unconstitutional denial of equal protection of the law.

None of the requirements which appear in the State statute herein involved are imposed upon members of employers associations. It is well known that employers associations are involved in labor industry disputes just the same as labor organizations. To impose requirements upon

members of labor organizations, while leaving representatives of employers organizations free from the requirements, constitutes a clear violation of the constitutional guarantee of equal protection of the law. *Hartford Company v. Harrison*, 301 U. S. 459; *Bethlehem Motors Corporation v. Flynt*, 256 U. S. 421.

The National Federation for Constitutional Liberties believes that failure to declare the Texas statute unconstitutional would be in sharp derogation of the constitutional principles discussed in this brief and in the detailed brief of those who have attacked the validity of the statute on this appeal.

The Federation is deeply concerned over the effect of the decision of the Supreme Court of the State of Texas, if unchanged, upon the morale of the working men and women of this country whose civic rights would be subjected to arbitrary abridgment by the statute. This blow at their rights can neither be welcomed nor supported. It cannot be expected to stimulate labor's contribution to our country's total effort to preserve its democracy from its external enemies.

Serious as the statute is to labor, in its wider implications it threatens abridgment of the allowable area of free speech.

Respectfully submitted,

NATIONAL FEDERATION FOR
CONSTITUTIONAL LIBERTIES

By NATHAN WITT,
Counsel.



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NO. 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

R. J. THOMAS,

Appellant

v.

H. W. COLLINS, SHERIFF
OF TRAVIS COUNTY, TEXAS,

Appellee

APPELLEE'S MOTION FOR REHEARING

GROVER SELLERS

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Collins, Sheriff of Travis
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The majority decision in this case seems to have been concurred in by some members of the court because of a misapprehension of the facts. The majority opinion suggests (p. 8) that the contempt judgment was based on the general as well as the specific invitation to join a labor union. However, it is held (p. 18) that since "we think the require-

ment of registration, in the present circumstances, was itself an invalid restriction, we have no occasion to consider whether the restraint as imposed goes beyond merely requiring previous identification or registration." The holding, therefore, as we construe this majority opinion deals solely with the validity of the statute as enacted. The manner in which it was applied is not stressed. The emphasis is on the holding that it could not be *applied at all* to appellant *while* he was making a labor speech. The suggestion in one of the concurring opinions that Texas sought in some way by the application of the statute to Mr. Thomas "to protect the public against false doctrine" refers to the *manner* in which the statute was applied. This impression, of course, is a false impression. We know as well as anyone could know, who was at all times present, that no such thought ever entered the mind of the Trial Judge or the Supreme Court of Texas. We know that Mr. Thomas was neither persecuted nor threatened by the Attorney General. The case was considered throughout by all parties and the courts as a friendly test suit until it reached this Honorable Court. How any other impression could have been created here is a matter on which we are frankly bewildered.

We are impressed by the frankness of Mr. Justice Jackson in his concurring opinion. We agree that if this court accords no finality to judgments of State courts on fact questions in civil rights cases, it should apply the same rule to decisions of the National Labor Relations Board and other Federal

bureaus, regardless of statutory prohibitions to the contrary. This court, however, does not do this and the public feels only the impact of the decisions of the court, as such.

We understand, of course, that employers, as a rule, secure adequate presentation of their constitutional rights within the frame work of existing procedures and rules of law. The persecuted and down-trodden, on the other hand, are often not adequately represented. The forms of law are not infrequently employed to deny to them their sacred constitutional liberties. The overwhelming majority of such cases never reach this high court. When one does and this court cuts through form to substance by reaching out with a long arm to lend a hand to such individuals, there are those of us who applaud. It is proof of courage and vigor. It is a sure sign of a great court. But, this is not one of those cases.

The unorthodox practice of attempting to administer justice irrespective of legal procedure is fraught with danger for the appellate judge. There is an ever present possibility that the appellate court, which is denied the privileges of an a priori court, may gain impressions which are the exact antithesis of the truth. Pronouncements based on false impressions are neither justice nor law. They certainly do not conform to the American ideal of "equal justice under law." Our Justice Oran M. Roberts, who once sat on the Supreme Court of Texas, spoke on this question with clarity and wisdom. He said:

"Justice is the dictate of right, according to the common consent of mankind generally, or of that portion of mankind who may be associated in one government, or who may be governed by the same principles and morals.

"Law is a system of rules, conformable, as must be supposed, to this standard, and devised upon an enlarged view of the relations of persons and things, as they practically exist. Justice is a chaotic mass of principles. Law is the same mass of principles, classified, reduced to order, and put in the shape of rules, agreed upon by this ascertained common consent. Justice is the virgin gold of the mines, that passes for its intrinsic worth in every case, but is subject to a varying value, according to the scales through which it passes. Law is the coin from the mint, with its value ascertained and fixed, with the stamp of government upon it which insures and denotes its current value . . . Whoever undertakes to determine a case solely by his own notions of its abstract justice, breaks down the barriers by which rules of justice are erected into a system, and thereby annihilates law.

" . . . To follow the dictates of justice, when in harmony with the law, must be a pleasure; but to follow the rules of law, in their true spirit, to whatever consequences they may lead, is a duty." *Duncan v. Magette*, 25 Tex. 253.

This quotation is not referred to for the purpose of implying that any member of this Honorable Court has failed to properly perform his judicial function, as he sees it, in the present case. It is sug-

—●—

gested, however, that at least one member of this Court has, by trying to do justice instead of follow law, permitted himself to fall into error. *The constitutional wrong which Mr. Justice Jackson seeks to redress does not exist.*

Our reply to the opinion written by Mr. Justice Rutledge and those who joined in his opinion is simply that they have not properly analyzed the issues in the case. When resort is made to the plural of the word "members" (See Note 15, p. 8 of Majority Opinion) to fortify the contention that the Supreme Court of Texas based its judgment on the speech as well as the O'Sullivan solicitation, the majority in our opinion is "straining at a gnat and swallowing a camel." It is the judgment of the Supreme Court of Texas that this court is reviewing, but it is the judgment of the trial court that this court is looking behind. Had the Supreme Court of Texas not written an opinion and had merely stamped the habeas corpus application "denied," the fact issues in this case would have been the same. How can you, as Appellate Justices, impute to an honest, fair, and able trial Judge a secret motive akin to malice, which he not only never had but which is disproved by the judgment that he entered? How can you as lawyers hold *as a matter of law* that the learned trial Judge considered as a basis for his implied findings irrelevant and incompetent evidence offered by Appellant when this is contrary to all of the usual presumptions in favor of the validity of judgments? What is there in the meager record in this case that prompts this, the Highest

Court in the land, to substitute its own fact findings for those implied from the judgment entered by the exclusive trier of facts under State law? The judgment of contempt was for a single penalty. The penalty imposed was no more than the State Statute (Article 1911, Vernon's Annotated Texas Civil Statutes) permitted for a single offense. How does this case differ in principle from *Dimmick v. Tompkins*, 194 U. S. 540, 541, cited at page 9 in the State's Brief in answer to questions propounded by the Court?

Our reply to Mr. Justice Jackson is that he erroneously assumes that Texas in this case undertook to prevent Mr. Thomas from making a labor speech. It is true that, in our original brief, (p. 15) we stated that "that portion of the act here in issue was enacted in recognition of the fact that something more is done by a labor organizer than talking." That was said before this court raised the issue by questions which it propounded to counsel at the last term of court that the contempt judgment might be invalid as applied to the Thomas speech but valid as applied to the O'Sullivan solicitation. This point has never been suggested by counsel for appellant and the statements made in our original brief were directed to the issues that were then before the court. As stated by Mr. Justice Roberts, "it appears that below, as here, the challenge

Cf. *Brooks v. United States*, 267 U. S. 432, 441, and *Doremus v. United States*, 262 F. 849, 853, Cert. den. 253 U. S. 487.

was . . . not that Texas was trying to enjoin appellant from making a speech, but that it could not regulate solicitation." In our reply to the questions propounded by the court, we have never taken the position that because "Thomas urged and invited one and all to join his union" that "this . . ., makes the speech something less than a speech." There was not the slightest effort in this case by Texas to condemn a speech, as such, by "by association" with solicitation. The suggestion that this case discloses "direct and candid efforts to stop speaking or publication, as such,"² is a charge that hurts, and we are doubly sensitive to it because we know that it is not true. "The impression that the injunction sought before he had reached the State was an effort to forestall him from speaking at all and that the contempt is based in part on the fact that he did make a public labor speech"³ is an utterly false impression. The statement that "Texas did not wait to see what Thomas would say or do"³ represents an erroneous interpretation of the facts.

The only reasons that the injunction route instead of arrest and conviction was used as a means of testing Section 5 were, first, a selfish reason that it was more convenient for the Attorney General to try the case at home (Austin) than in Houston; and, second, the practical reason that he wanted an immediate hearing while Mr. Thomas was in Texas so that he could establish the point that he was a paid labor

² Mr. Justice Jackson, concurring opinion, p. 23.

³ Mr. Justice Jackson, concurring opinion, p. 24.

organizer for the C. I. O. The solicitation in Texas was to be for memberships in the Oil Workers International Union and not in the U. A. W. Both of these unions are affiliated with the C. I. O. but as we understood the set-up, the C. I. O. is not a labor union but an association of labor unions. It is significant that the complaint filed against Mr. Thomas by local officers at Houston was later dismissed because they were unable, in Mr. Thomas' absence, to establish this item of essential proof in their criminal case.

The constitutionality of Section 5 was already involved in a declaratory judgment suit (Cause No. 68729, in the 98th District Court of Travis County) to which Mr. Thomas (R. 48) was a party; but the Attorney General had filed a plea in abatement to this suit because it was brought against State officials without the State's consent, and it was contended that the declaratory judgment statute could not be used for this purpose. Counsel for Mr. Thomas and the C. I. O. were apprehensive of this challenge (Cf. *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293) and desired a test of Section 5 under circumstances where the validity vel non of this section, as enacted, would be presented as a pure legal question. The entire record in this case and the action of counsel on both sides are pregnant with the implication that this was the purpose and only purpose of the suit. Mr. Justice Roberts is eminently correct when he says that "the opinion of the court imports into the case elements on which counsel for appellant did not rely; elements which

in fact counsel strove to eliminate in order to come at the fundamental challenge to any requirement of identification of a labor organizer." The thought that Mr. Thomas would be prevented from making a labor speech either by prior general restraint or otherwise, was exactly the thing both parties wished to avoid. (R. 8) Mr. Justice Roberts is correct in saying, "the Appellant does not contend that, in attempting to identify solicitors and preclude solicitation without identification, the statute either in terms, or as construed and applied, reaches over into the realm of public assembly, of public speaking, of argument or persuasion. Aware that the state proposed to invoke the statute against him, he made sure that the bare right he asserted to solicit without compliance with its requirement should not be clouded by confusion of that right with the others mentioned."

Counsel could not see then and do not understand now, how a restraining order which duplicated the words of the statute could, as a matter of law or as a matter of fact, impose any more of a threat or general restraint on free speech than the statute itself imposes. The injunction route was merely a convenient and expeditious means of presenting a clear cut legal question. The criminal penalties provided in the law for violation of Section 5 were five times as great as the maximum penalties allowed under Texas law for contempt of court. Art. 1911 and Section 11 of Article 5154a, Vernon's Ann. Texas Civ. Statutes. The answer is that Mr. Thomas was not deterred in the slightest but proceeded to deliver his speech as originally prepared. He not on-

ly delivered it but went out of his way to do the very thing which he had been told it was necessary to do in order to violate the injunction. (R. 4)

The State has never made the contention, either in the trial court, the Supreme Court of Texas, or this Court, that appellant could or should be punished for his contumaciousness, if Section 5 of the Act was unconstitutional. The "Plaintiff's Motion for Contempt" in the trial court (R. 295) contained no such contention. The "Motion by State of Texas to dismiss application for writ of error" filed in the Supreme Court of Texas (original R. 316) contained no such contention and neither did the brief which was filed in support of the motion. The principal contention in the motion to dismiss and the brief in support of it was that the appellant should have appealed from the contempt judgment rather than apply for a writ of habeas corpus. If the majority opinion implies otherwise by footnote 7 on page 6 it is to this extent inaccurate. In this court the Attorney General frankly stated orally and in the brief that he did not want Mr. Thomas punished unless Section 5 of the Act was constitutional. On pages 12 and 13 of "Brief of Appellee on Questions Propounded for Re-argument" it is stated:

"We concede that if Section 5 of Article 5154a is unconstitutional as enacted, that the District Court of Travis County, Texas, for the 53rd Judicial District, which entered the temporary restraining order, had no jurisdiction of the subject matter. The District Court of Travis County is a constitutional court of general

jurisdiction (Section 8, Article V, Texas Constitution) but it had no general jurisdiction to enjoin appellant merely because his acts would constitute a crime or penal offense or to punish appellant for contempt for violating a void order. *Ex part Hughes*, 133 Tex. 505, 129 S. W. (2d) 270. Section 12 of said Article 5154a is the source of the District Court's jurisdiction in this case but if Section 5 of that Article is unconstitutional, the Court would have no power to enforce obedience to it by issuing an injunction as authorized in Section 12."

The Attorney General knew before the suit for injunction was filed that, under Texas law, the injunction procedure was a convenient method for enabling Mr. Thomas to accomplish his announced purpose of securing a test of Section 5. His counsel have never complained that the State employed this procedure instead of arrest and conviction. Mr. Justice Roberts is correct in saying, "no point is made of the circumstance that the appellant's proposed activity was enjoined in advance. Counsel at our bar asserted the constitutional vice lay in the prohibition of the statute and that vice would preclude arrest and conviction for violation, no less than injunction against the denounced activity."

The Attorney General could not control the actions of the local officers at Houston. They arrested Mr. Thomas, it is true, but the Attorney General did not. *Why did the Attorney General advise Mr. Thomas that it would be necessary for him to solicit an individual if he wanted a test of the law*, (R. 5, 6, 41,

289), *if the Attorney General's real purpose was to prevent Mr. Thomas from speaking at all? Why does this court suppose, since it has undertaken an examination of the facts for impressions and implications, that Mr. Thomas did the unusual thing of announcing to the press before he left Detroit that he was going to Texas "to get himself arrested" in order to test the law? (R. 292, 293) Why does this court suppose that Mr. Thomas voluntarily came to Austin the second day after the speech for the habeas corpus hearing? (R. 308) Why does this court suppose that Vice-President Thomas voluntarily took the stand and led the trial judge to believe that he was a labor organizer "for pecuniary or financial consideration" for the C. I. O.? (R. 30) Mr. Justice Roberts is correct in saying, "He might well have questioned the application of the law to him, or to a public address made by him in his official capacity, but he refrained, obviously because he wished to test the Act's validity and so, in effect, stipulated that its sweep included him, and his conduct on the occasion in question."* The Attorney General did not ask him a question. (R. 45) As lawyers we cannot help but feel consternation when an appellate judge bases his decision on an "impression" that is not true. Especially is this so when the Judge is moved by the highest conceptions of public duty. The facts of this case furnish a poor vehicle for the eloquent thoughts which are so clearly expressed in the concurring opinion of Mr. Justice Jackson.

By filing a concurring opinion Mr. Justice Jack-

son has permitted the application to this case of a principle of law which he recently condemned in his dissent in *Prince v. Commonwealth of Mass.*, 321 U. S. 177, 178. As we understand the majority opinion it is held that Section 5 is invalid, as enacted, only in so far as it applies to a paid labor organizer while he is engaged in making a labor speech. It is valid on all other occasions. In short, its validity depends on circumstances which are entirely within control of the labor organizer. He suspends its application to him at his pleasure. The majority opinion sets up no standard and makes no attempt at separating immune activities from collateral or auxiliary activities which affect the public and are intended to secure means to sustain the organization and its leaders. In his dissent in the Prince case Mr. Justice Jackson said:

“This case brings to the surface the real basis of disagreement among members of this Court in previous Jehovah’s Witness cases. *Murdock v. Pennsylvania*, 319 U. S. 105, 63 S. Ct. 870, 87 L. ed. 1292, 146 A. L. R. 82; *Martin v. Struthers*, 319 U. S. 141, 63 S. Ct. 862, 87 L. ed. 1313; *Jones v. Opelika*, 316 U. S. 584, 86 L. ed. 1691, 141 A. L. R. 514; *Id.* 319 U. S. 103, 63 S. Ct. 890, 87 L. ed. 1290; *Douglas v. Jeannette*, 319 U. S. 157, 63 S. Ct. 877, 882, 87 L. ed. 1324. Our basic difference seems to be as to the method of establishing limitations which of necessity bound religious freedom.

“My own view may be shortly put: I think the limits begin to operate whenever activities begin to affect or collide with liberties of others or of the public. Religious activities which con-

cern only members of the faith are and ought to be free—as nearly absolutely free as anything can be. But beyond these, many religious denominations or sects engage in collateral and secular activities intended to obtain means from unbelievers to sustain the worshippers and their leaders. They raise money, not merely by passing the plate to those who voluntarily attend services or by contributions by their own people but by solicitations and drives addressed to the public by holding public dinners and entertainments, by various kinds of sales and Bingo games and lotteries. All such money-raising activities on a public scale are, I think, Caesar's affairs and may be regulated by the state so long as it does not discriminate against one because he is doing them for a religious purpose, and the regulation is not arbitrary and capricious, in violation of other provisions of the Constitution.

"The Court in the *Murdock* case rejected this principle of separating immune religious activities from secular ones in declaring the disabilities which the Constitution imposed on local authorities. Instead, the Court now draws a line based on age that cuts across both true exercise of religion and auxiliary secular activities. I think this is not a correct principle for defining the activities immune from regulation on the grounds of religion, and *Murdock* overrules the grounds on which I think affirmance should rest."

It is necessary in this case to determine the extent to which the State "may regulate one who makes a business or a livelihood of soliciting funds

or memberships for unions." It is the only issue in the case.

In the recent case of *Martin v. Struthers*, 319 U. S. 155, Mr. Justice Jackson joined in a dissenting opinion wherein it was said:

"Freedom to distribute publications is obviously a part of the general freedom guaranteed the expression of ideas by the First Amendment. It is trite to say that this freedom of expression is not unlimited. Obscenity, disloyalty and provocatives do not come within its protection. *Near v. Minnesota*, 283 US 697, 712, 716, 75 L. ed. 1357, 1365, 51 S. Ct. 625; *Schenck v. United States*, 249 US 47, 51, 63 L. ed. 470, 473, 39 S. Ct. 247; *Chapiknsky v. New Hampshire*, 315 US 568, 572, 574, 86 L. ed. 1031, 1035, 1036, 62 S. Ct. 766. All agree that there may be reasonable regulation of the freedom of expression. *Cantwell v. Connecticut*, 310 US 296, 304, 84 L. ed. 1213, 60 S. Ct. 900, 128 ALR 1352. One cannot throw dodgers 'broadcast in the streets.' *Schneider v. Irvington*, 308 US 147, 161, 84 L. ed. 155, 164, 60 S. Ct. 146."

The Texas requirement for registration of paid labor organizers represents the very minimum restriction, which could be made on any person pursuing a profession or business. If "it is trite to say that this freedom of expression is not unlimited" how can it be said under the facts of this case that the Texas law is unconstitutional? "To comply with the law the appellant need only give his name and

affiliation and his credentials. The statute nowise regulates, curtails or bands his activities.”¹

In the recent case of *Follett v. McCormick*, 321 U. S. 581, 582, Mr. Justice Jackson joined in a dissenting opinion wherein it was said:

“Follett is not made to pay a tax for the exercise of that which the First Amendment has relieved from taxation. He is made to pay for that for which all others similarly situated must pay,—an excise for the occupation of street vending. Follett asks exemption because street vending is, for him, also part of his religion. As a result, Follett will enjoy a subsidy for his religion. He will save the contribution for the cost of government which everyone else will have to pay

“Unless the phrase ‘free exercise’ embodied in the First Amendment, means that government must render service free to those who earn their living in a religious calling, no reason is apparent why the appellant, like every other earner in the community, should not contribute his share of the community’s common burden of expense. In effect the decision grants no free exercise of religion, in the sense that such exercise shall not be hindered or limited, but, on the other hand, requires that the exercise of religion be subsidized.”

If the State of Texas cannot require a paid professional labor organizer to register and establish

¹ Mr. Justice Roberts, dissenting opinion, p. 29.

his identity, a fortiori it cannot impose on him a license fee for the privilege of carrying on his profession in the State.

It is meaningless to say, as Mr. Justice Jackson does, that a State "may regulate one who makes a business or a livelihood of soliciting funds or memberships for unions," if it is denied the means for enforcing the regulation. It is equivalent to saying that a right exists without a remedy. Every unregistered labor organizer, when arrested for soliciting members, can truthfully say that he was speaking about the rights of labor. There is no reason to give immunity to an individual just because he has a large audience. Private speech may be just as important as public speech. Mr. Justice Rutledge and those who join with him do not limit the immunity to public speech.

We had thought that there was a distinction between a purely registration statute and legislation which impeded, impaired or prohibited the exercise of civil rights. The prior opinions of this court support this distinction. If there is now no such distinction, this court should say so. Under the majority opinion no standard is laid down by which this question can be decided. It is held that freedom of expression is unlimited while it is being enjoyed by labor organizers when engaged in discussing labor problems with labor groups. This notion that a law, as enacted, is valid or invalid according to what the offender may be doing at the particular time, is, indeed, a novel one. The law is not invalid

all the time. It is just invalid *on occasions*. No such impasse should be allowed to exist in law. A law as enacted is either valid or invalid. The strange holding in this case arises, of course, by the apparent unwillingness of this court to permit the trier of facts under State law to determine fact questions that may affect constitutional liberties. Because of the collateral issues involved in the public mind, it is indeed unfortunate that in this case, this court should feel impelled by impressions which four of its members say are not supported by any evidence in the record, and should again strike down judgments of State Courts, substituting its fact findings for those which have already been determined by the exclusive trier of facts under state law.*

If the majority of the court finds that the judgment in contempt and the decision of the Supreme Court of Texas on habeas corpus are invalid because they were based in part on the fact that Mr. Thomas made a public labor speech and finds also that the application of Section 5 to the O'Sullivan solicitation does not render it unconstitutional, we ask that this case be remanded for further trial consistent with such opinion. Upon a retrial the evidence can be limited to the O'Sullivan solicitation and the pleadings amended accordingly. This is the established practice in this court and the Courts of Texas in similar cases. Article 1856 Vernon's Ann. Texas Civil Statutes, Rule 505 Vernon's Texas Rules of Civil Procedure, *Williams v. North Carolina*, 317

U. S. 287, 304;⁵ *Graves v. United States*, 165 U. S. 329, 330; *Railroad Commission of Texas v. Pullman Company*, 312 U. S. 496, 501, 502; *Sovereign Camp W. O. W. v. Patton*, 117 Texas 1, 295 S. W. 913; *Harris v. Ferguson*, 137 Tex. 592, 156 S. W. (2d) 135; Ex parte Olson, 111 Tex. 601, 243 S. W. 773, 777, 778.

This is a civil case and not a criminal case. *Harbison v. McMurray*, 138 Tex. 192, 197, 158 S. W. (2d) 284, 287.

WHEREFORE, appellee prays that a rehearing be granted and that the judgment entered January 8, 1945, be set aside and the judgment below affirmed, or in the alternative, that the case be reversed and remanded.

We request oral argument on this motion.

Respectfully submitted,

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W. Collins, Sheriff of Travis
County, Texas.

⁵ Cited in the majority opinion on page 9.

SUPREME COURT OF THE UNITED STATES.

No. 14.—OCTOBER TERM, 1944.

R. J. Thomas, Appellant,	}	Appeal from the Supreme Court of Texas.
vs.		
H. W. Collins, Sheriff of Travis County, Texas.		

[January 8, 1945.]

Mr. Justice RUTLEDGE delivered the opinion of the Court.

The appeal is from a decision of the Supreme Court of Texas which denied appellant's petition for a writ of habeas corpus and remanded him to the custody of appellee, as sheriff of Travis County. 141 Tex. 591. In so deciding the court upheld, as against constitutional and other objections, appellant's commitment for contempt for violating a temporary restraining order issued by the District Court of Travis County. The order was issued *ex parte* and in terms restrained appellant, while in Texas, from soliciting members, for or memberships in specified labor unions and others affiliated with the Congress of Industrial Organizations, without first obtaining an organizer's card as required by House Bill No. 100, c. 104, General and Special Laws of Texas, Regular Session, 48th Legislature (1943). After the order was served appellant addressed a mass meeting of workers and at the end of his speech asked persons present to join a union. For this he was held in contempt, fined and sentenced to a short imprisonment.

The case has been twice argued here. Each time appellant has insisted, as he did in the state courts, that the statute as it has been applied to him is in contravention of the Fourteenth Amendment, as it incorporates the First, imposing a previous restraint upon the rights of freedom of speech and free assembly, and denying him the equal protection of the laws. He urges also that the application made of the statute is inconsistent with the provisions of the National Labor Relations Act, 49 Stat. 449, and other objections which need not be considered. For reasons to be stated we think the statute as it was applied in this case imposed previous restraint upon appellant's rights of free speech and free assembly and the judgment must be reversed.

The pertinent statutory provisions, Sections 5 and 12, are part of Texas' comprehensive scheme for regulating labor unions and their activities. They are set forth in the margin.¹

I.

The facts are substantially undisputed. The appellant, Thomas, is the president of the International Union U.A.W. (United Automobile, Aircraft and Agricultural Implements Workers) and a vice president of the C. I. O. His duties are manifold, but in addition to executive functions they include giving aid and direction

1 Sec. 5. "All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation, 'labor organizer'; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership."

Sec. 12. "The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts."

The Act also requires unions to file annual reports containing specified names and addresses, a statement of income and expenditure with the names of recipients, and copies of all contracts with employers which include a check-off clause. It prohibits charging dues which "will create a fund in excess of the reasonable requirements of such union," demanding or collecting any fee for the privilege to work and provides for liberal construction to prevent "excessive initiation fees." All officers, agents, organizers and representatives must be elected by at least a majority vote. Aliens and felons (unless restored to citizenship) cannot be "officers, officials . . . or labor organizers."

Additional enforcement provisions are found in Section 11. A civil penalty not exceeding \$1,000 is imposed "if any labor union violates any provision of this Act," to be recovered in a suit in the name of the State, instituted by authorized officers. Violation of the statute by a union officer or labor organizer is made a misdemeanor, punishable by fine of not over \$500 or confinement in the county jail for not to exceed 60 days, or both.

By Section 2(e), "labor organizer" shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union." Under the interpretation promulgated by the Secretary of State, "Any person who solicits memberships for a union and receives remuneration therefor, will be considered a 'labor organizer'. . . . Solicitation of memberships as an incident to other duties for which a salary is paid will be considered solicitation for remuneration."

in organizing campaigns and by his own statement soliciting members, generally or in particular instances, for his organizations and their affiliated unions. He receives a fixed annual salary as president of the U. A. W., resides in Detroit, and travels widely through the nation in performing his work.

O.W.I.U. (Oil Workers Industrial Union), a C.I.O. affiliate, is the parent organization of many local unions in Texas, having its principal office in Fort Worth. One of these is Local No. 1002, with offices in Harris County and membership consisting largely of employees of the Humble Oil & Refining Company's plant at Bay Town, Texas, not far from Houston. During and prior to September, 1943, C.I.O. and O.W.I.U. were engaged in a campaign to organize the employees at this plant into Local No. 1002, after an order previously made by the National Labor Relations Board for the holding of an election. As part of the campaign a mass meeting was arranged for the evening of September 23, under the auspices of O.W.I.U., at the city hall in Pelly, Harris County, near the Bay Town plant. Wide publicity was given to the meeting beforehand. Arrangements were made for Thomas to come to Texas to address it and wide notice was given to his announced intention of doing so.

Thomas arrived in Houston the evening of September 21. He testified without contradiction that his only object in coming to Houston was to address this meeting, that he did not intend to remain there afterward and that he had return rail reservations for leaving the state within two days. At about 2:30 o'clock on the afternoon of Thursday, September 23, only some six hours before he was scheduled to speak, Thomas was served with the restraining order and a copy of the fiat.

These had been issued *ex parte* by the District Court of Travis County (which sits at Austin, the state capital, located about 170 miles from Houston) on the afternoon of September 22, in a proceeding instituted pursuant to Section 12 by the State's attorney general. The petition for the order shows on its face it was filed in anticipation of Thomas' scheduled speech.² And the terms of

² The petition recites the time and place of the mass meeting, that Thomas was scheduled to speak and would solicit members for the union at the meeting without an organizer's card. The recitals were based on an alleged previous announcement by him of intention to do these things, which at the hearing he denied having made. The petition stated there was "not sufficient time before the defendant makes the threatened speech" for notice to be served and returned and concludes with a prayer for the restraining order.

the order show that it was issued in anticipation of the meeting and the speech.³

Upon receiving service, Thomas consulted his attorneys and determined to go ahead with the meeting as planned. He did so because he regarded the law and the citation as a restraint upon free speech and free assembly in so far as they prevented his making a speech or asking someone to join a union without having a license or organizer's card at the time.

Accordingly, Thomas went to the meeting, arriving about 8:00 p. m., and, with other speakers, including Massengale and Crossland, both union representatives, addressed an audience of some 300 persons. The meeting was orderly and peaceful. Thomas, in view of the unusual circumstances, had prepared a manuscript originally intended, according to his statement, to embody his entire address. He read the manuscript to the audience. It discussed, among other things, the State's effort, as Thomas conceived it, to interfere with his right to speak and closed with a general invitation to persons present not members of a labor union to join Local No. 1002 and thereby support the labor movement throughout the country. As written, the speech did not address the invitation to any specific individual by name or otherwise.⁴ But Thomas testified that he added, at the conclusion of the written speech, an oral solicitation of one Pat O'Sullivan, a nonunion man in the audience whom he previously had never seen.⁵

After the meeting Thomas, with two of the other union speakers,

³ The order repeated substantially the recitals of the petition, concerning the meeting, Thomas' scheduled speech and intention to solicit members, as grounds for its issuance appearing from "the sworn petition and statements of counsel," and enjoined Thomas from soliciting memberships in and members for Local No. 1002 and any other union affiliated with the C. I. O., while in Texas, without first obtaining an organizer's card.

⁴ According to the report of the speech given in the record, it refers to Thomas' invitation to speak at the meeting, his acceptance, and his intention to discuss why workers should join the union and to urge those present to do so. After stating he had learned, on arrival, that his right to make such a speech was questioned, he said: "I didn't come here to break the law. I came here to make this speech and to ask you to join the union. But since the issue has arisen I don't want anybody to say I'm evading it . . . to have an opening to get out without making a test of this law. . . . Therefore as Vice President of the C. I. O. and as a union man, I earnestly ask those of you who are not now members of the Oil Workers International Union to join now. I solicit you to become a member of the union of your fellow workers and thereby join hands with labor throughout this country in all industries. . . ."

⁵ Thomas testified his invitation to O'Sullivan was as follows: "I said, 'Pat O'Sullivan, I want you to join the Oil Workers Union. I have some application cards here, and I would like to have you sign one.' I went on from

was arrested and taken before a justice of the peace. Complaints were filed in criminal proceedings, presumably pursuant to Section 11. Thomas was released on bond, returned to his hotel, and the next morning left for Dallas. There he learned an attachment for his arrest had been issued at Austin by the Travis County District Court, pursuant to the attorney general's motion filed that morning in contempt proceedings for violation of the temporary restraining order.⁶

On the evening of September 24, Thomas went to Austin for the hearing upon the temporary injunction set for the morning of the 25th. At this time he appeared and moved for dismissal of the complaint, for dissolution of the temporary restraining order, and to quash the contempt proceeding. The motions were denied and, after hearing, the court ordered the temporary injunction to issue. It also rendered judgment holding Thomas in contempt for violating the restraining order and fixed the penalty at three days in jail and a fine of \$100. Process for commitment thereupon issued and was executed. Application to the supreme court for the writ of habeas corpus was made and granted, the cause was set for hearing in October, and Thomas was released on bond, all on September 25. Thereafter, an amended application in habeas corpus was filed, hearing on the cause was had, judgment was rendered sustaining the commitment, a motion for rehearing was overruled, and the present appeal was perfected. Argument followed here at the close of the last term, with reargument at the beginning of the present one to consider questions upon which we desired further discussion.

II.

The Supreme Court of Texas, deeming habeas corpus an appropriate method for challenging the validity of the statute as

there and I asked everybody in the crowd who was not a member of the organization to come up and if it was necessary I would personally sign him to these application cards."

Thomas' account of what occurred at the meeting is substantiated by the testimony of Jesse Owens, assistant attorney general of Texas, who was present.

⁶ The motion recited that Thomas "(1) . . . did at said time and place solicit Pat O'Sullivan . . . to join a local union" of O. W. I. U. and "(2) At said time and place . . . did openly and publicly solicit an audience of approximately 500 persons . . . to then and there join and become members" of O. W. I. U., charged that "*the acts of R. J. Thomas above alleged were in open and flagrant violation*" of the court's order and writ and alleged that "*said acts constitute contempt of this court and should be punished by appropriate order.*" (Emphasis added.)

applied,⁷ sustained the Act as a valid exercise of the State's police power, taken "for the protection of the general welfare of the public, and particularly the laboring class," with special reference to safeguarding laborers from imposture when approached by an alleged organizer. The provision, it was said, "affects only the right of one to engage in the business as a paid organizer, and not the mere right of an individual to express his views on the merits of the union." The court declared the act "does not require a paid organizer to secure a license," but makes mandatory the issuance of the card "to all who come within the provisions of the Act upon their good faith compliance therewith." Accordingly it held that the regulation was not unreasonable.

The court conceded however that the Act "interferes to a certain extent with the right of the organizer to speak as the paid representative of the union." Nevertheless, it said, "such interferences are not necessarily prohibited by the Constitution. The State under its police power may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they are reasonably necessary for the protection of the general public." Accordingly, it likened the instant prohibition to various other ones imposed by state or federal legislation upon "the right of one to operate or speak as the agent of another," including securities salesmen, insurance agents, real estate brokers, etc. And various decisions of this Court and others⁸ were thought to support the conclusion that the Act "imposes no previous general restraint upon the right of free speech. . . . It merely requires paid organizers to register with the Secretary of State before beginning to operate as such."

III.

Appellant first urges that the application of the statute amounted to the requirement of a license "for the simple act of delivering an address to a group of workers." He says the act penalized "was simply and solely the act of addressing the workers on the

⁷ The court reviewed the contempt commitment over appellee's strenuous jurisdictional objections. Since the state court has determined the validity of the statute and its application in the habeas corpus proceeding, as against the objections on federal constitutional grounds, those questions are properly here on this appeal. *Bryant v. Zimmerman*, 278 U. S. 63. The State concedes this.

⁸ *Cantwell v. Connecticut*, 310 U. S. 296; *Cox v. New Hampshire*, 312 U. S. 569; *City of Manchester v. Leiby*, 117 F. 2d 661.

. . . benefits of unionism, and concluding the address with a plea to the audience generally and to a named worker in the audience to join a union." He points out that he did not parade on the streets, did not solicit or receive funds, did not "sign up" workers,⁹ engaged in no disturbance or breach of the peace, and that his sole purpose in going to Texas and his sole activity there were to make the address including the invitations which he extended at the end. There is no evidence that he solicited memberships or members for a union at any other time or occasion or intended to do so. His position necessarily maintains that the right to make the speech includes the right to ask members of the audience, both generally and by name, to join the union.

Appellant also urges more broadly that the statute is an invalid restraint upon free expression in penalizing the mere asking a worker to join a union, without having procured the card, whether the asking takes place in a public assembly or privately.

Texas, on the other hand, asserts no issue of free speech or free assembly is presented. With the state court, it says the statute is directed at business practices, like selling insurance, dealing in securities, acting as commission merchant, pawnbroking, etc., and was adopted "in recognition of the fact that something more is done by a labor organizer than talking."¹⁰

Alternatively, the State says, Section 5 would be valid if it were framed to include voluntary, unpaid organizers and if no element of business were involved in the union's activity. The statute "is a registration statute and nothing more," and confers only "ministerial and not discretionary powers" upon the Secretary of State. The requirement accordingly is regarded as one merely for previous identification, valid within the rule of *City of Manchester v. Leiby*, 117 F. 2d 661, and the dictum of *Cantwell v. Connecticut*, 310 U. S. 296, 306.¹¹

⁹ However, the record shows he offered to sign the application blanks or cards "if it was necessary." Cf. note 5 *supra*.

¹⁰ "He acts for an alleged principal and collects money for the principal, or if he does not actually collect fees and dues in person, he makes it possible for his principal to collect them. He purports to act for a labor union in establishing a contractual relation. . . ." The statements are taken from the brief.

¹¹ Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent," (emphasis added) citing for comparison *Lewis Publishing Co. v. Morgan*, 229 U. S. 288, 306, 310; *Bryant v. Zimmerman*, 278 U. S. 63, 72. Cf. text *infra* at note 23.

In accordance with their different conceptions of the nature of the issues, the parties would apply different standards for determining them. Appellant relies on the rule which requires a showing of clear and present danger to sustain a restriction upon free speech or free assembly.¹² Texas, consistently with its "business practice" theory, says the appropriate standard is that applied under the commerce clause to sustain the applications of State statutes regulating transportation made in *Hendrick v. Maryland*, 235 U. S. 610; *Clark v. Paul Gray, Inc.*, 306 U. S. 583; and *California v. Thompson*, 313 U. S. 109.¹³ In short, the State would apply a "rational basis" test, appellant one requiring a showing of "clear and present danger."

Finally, as the case is presented here, Texas apparently would rest the validity of the judgment exclusively upon the specific individual solicitation of O'Sullivan, and would throw out of account the general invitation, made at the same time, to all non-union workers in the audience.¹⁴ However, the case cannot be disposed of on such a basis. The Texas Supreme Court made no distinction between the general and the specific invitations.¹⁵ Nor did the District Court. The record shows that the restraining order was issued in explicit anticipation of the speech and to restrain Thomas from uttering in its course any language which could be

¹² Cf. *Schenck v. United States*, 249 U. S. 47; Mr. Justice Holmes dissenting in *Abrams v. United States*, 250 U. S. 616, 624 and in *Gitlow v. New York*, 268 U. S. 652, 672; *Bridges v. California*, 314 U. S. 252. A recent statement is that made in *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 639: "The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."

¹³ According to the brief, "The analogy is that *interstate commerce like freedom of religion, speech and press* is protected from undue burdens imposed by the States, yet the States still have authority to impose regulations which are reasonable in relation to the subject." (Emphasis added.)

¹⁴ The argument, both at the bar and in the brief, has been indefinite in this respect. It has neither conceded nor unequivocally denied that the sentence was imposed on account of both acts. Nevertheless the State maintains that the invitation to O'Sullivan in itself is sufficient to sustain the judgment and sentence and that nothing more need be considered to support them.

¹⁵ That the court regarded the violation as consisting of both acts appears from the statement in the opinion that Thomas "violated the terms of the injunction by soliciting members for said union without having first registered" The plural could have been used only if the general platform plea were considered as being one of the violations restrained and punished.

taken as solicitation.¹⁶ The motion for the fiat in contempt was filed and the fiat itself was issued on account of both invitations.¹⁷ The order adjudging Thomas in contempt was in general terms, finding that he had violated the restraining order, without distinction between the solicitations set forth in the petition and proved as violations.¹⁸ The sentence was a single penalty. In this state of the record it must be taken that the order followed the prayer of the motion and the fiat's recital, and that the penalty was imposed on account of both invitations. The judgment therefore must be affirmed as to both or as to neither. Cf. *Williams v. North Carolina*, 317 U. S. 287, 292; *Stromberg v. California*, 283 U. S. 359, 368. And it follows that the statute, as it was applied, restrained and punished Thomas for uttering, in the course of his address, the general as well as the specific invitation.

IV.

The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. Cf. *Schneider v. State*, 308 U. S. 147; *Cant-*

¹⁶ The *ex parte* petition for the order was founded solely upon the allegation, based only upon rumor as later appeared from Thomas' uncontradicted testimony, that he intended to address the meeting and in the course of his speech generally to solicit nonunion men present to join the union. Cf. note 2 *supra*. When the petition was filed and the restraining order was issued and served, it was not possible to specify anticipated individual solicitations and consequently only anticipated general ones could be and were relied upon. The order therefore must be taken to have been intended to reach exactly what it was requested to get at. Cf. note 3 *supra*; and text *infra* at note 20 ff.

¹⁷ The motion after reciting the solicitation of O'Sullivan and adding that Thomas "did openly and publicly solicit an audience of approximately 300 persons . . .," claimed both acts as being "in open and flagrant violation of the order of this court" and as contempt, and sought punishment for them.

¹⁸ The order made the usual formal recitals concerning the previous proceedings, the parties' appearance and the court's "having heard the pleadings and evidence." It then, without stating the particular acts in which the contempt consisted, cf. note 17 *supra*, found generally that Thomas "did in Harris County, Texas, on the 23d day of September A. D. 1943, violate this court's temporary restraining order heretofore issued enjoining and restraining him . . . from soliciting members to join" the O. W. I. U. without obtaining an organizer's card, adjudged him guilty of contempt "for the violation of the law and of the order of this court on the 23d day of September, A. D. 1943," and assessed the punishment as stated above.

well v. Connecticut, 310 U. S. 296; *Prince v. Massachusetts*, 321 U. S. 158. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. Compare *United States v. Carolene Products Co.*, 304 U. S. 144, 152-153.

For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger.¹⁹ The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. *De Jonge v. Oregon*, 299 U. S. 353, 364, and therefore are united in the First Article's assurance. Cf. 1 Annals of Congress 759-760.

This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience. Cf. *Pierce v. Society of Sisters*, 268 U. S. 510; *Meyer v. Nebraska*, 262 U. S. 390; *Prince v. Massachusetts*, 321 U. S. 158. Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest.

The idea is not sound therefore that the First Amendment's

¹⁹ Cf. note 12 *supra*.

safeguards are wholly inapplicable to business or economic activity. And it does not resolve where the line shall be drawn in a particular case merely to urge, as Texas does, that an organization for which the rights of free speech and free assembly are claimed is one "engaged in business activities" or that the individual who leads it in exercising these rights receives compensation for doing so. Nor, on the other hand, is the answer given, whether what is done is an exercise of those rights and the restriction a forbidden impairment, by ignoring the organization's economic function, because those interests of workingmen are involved or because they have the general liberties of the citizen, as appellant would do.

These comparisons are at once too simple, too general, and too inaccurate to be determinative. Where the line shall be placed in a particular application rests, not on such generalities, but on the concrete clash of particular interests and the community's relative evaluation both of them and of how the one will be affected by the specific restriction, the other by its absence. That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition. *Schneider v. State*, 308 U. S. 147, 161. And the answer, under that tradition, can be affirmative, to support an intrusion upon this domain, only if grave and impending public danger requires this.

That the State has power to regulate labor unions with a view to protecting the public interest is, as the Texas court said, hardly to be doubted. They cannot claim special immunity from regulation. Such regulation however, whether aimed at fraud or other abuses, must not trespass upon the domains set apart for free speech and free assembly. This Court has recognized that "in the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. . . . Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society." *Thornhill v. Alabama*, 310 U. S. 88, 102-103; *Senn v. Tile Layers Pro-*

tective Union, 301 U. S. 468, 478. The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly. *Hague v. Committee for Industrial Organization*, 307 U. S. 496. The Texas court, in its disposition of the cause, did not give sufficient weight to this consideration, more particularly by its failure to take account of the blanketing effect of the prohibition's present application upon public discussion and also of the bearing of the clear and present danger test in these circumstances.

V.

In applying these principles to the facts of this case we put aside the broader contentions both parties have made and confine our decision to the narrow question whether the application made of Section 5 in this case contravenes the First Amendment.

The present application does not involve the solicitation of funds or property. Neither Section 5 nor the restraining order purports to prohibit or regulate solicitation of funds, receipt of money, its management, distribution, or any other financial matter. Other sections of the Act deal with such things.²⁹ And on the record Thomas neither asked nor accepted funds or property for the union at the time of his address or while he was in Texas. Neither did he "take applications" for membership, though he offered to do so "if it was necessary"; or ask anyone to join a union at any other time than the occasion of the Pelly mass meeting and in the course of his address.

Thomas went to Texas for one purpose and one only—to make the speech in question. Its whole object was publicly to proclaim the advantages of workers' organization and to persuade workmen to join Local No. 1002 as part of a campaign for members. These also were the sole objects of the meeting. The campaign, and the meeting, were incidents of an impending election for collective bargaining agent, previously ordered by national authority pur-

²⁹ See note 1 *supra*. According to the State's concession, Thomas might have made speeches "lauding unions and unionism" throughout Texas without violating the statute or the order. And at each address he could have taken a collection or sought and received contributions for the union, or for himself, without running afoul their prohibitions—that is, always if in doing so he avoided using words of invitation to unorganized workers to join a C. I. O. union.

suant to the guaranties of national law. Those guaranties include the workers' right to organize freely for collective bargaining. And this comprehends whatever may be appropriate and lawful to accomplish and maintain such organization. It included, in this case, the right to designate Local No. 1002 or any other union or agency as the employees' representative. It included their right fully and freely to discuss and be informed concerning this choice, privately or in public assembly. Necessarily correlative was the right of the union, its members and officials, whether residents or nonresidents of Texas and, if the latter, whether there for a single occasion or sojourning longer, to discuss with and inform the employees concerning matters involved in their choice. These rights of assembly and discussion are protected by the First Amendment. Whatever would restrict them, without sufficient occasion, would infringe its safeguards. The occasion was clearly protected. The speech was an essential part of the occasion, unless all meaning and purpose were to be taken from it. And the invitations, both general and particular, were parts of the speech, inseparable incidents of the occasion and of all that was said or done.

That there was restriction upon Thomas' right to speak and the rights of the workers to hear what he had to say, there can be no doubt. The threat of the restraining order, backed by the power of contempt, and of arrest for crime, hung over every word. A speaker in such circumstances could avoid the words "solicit," "invite," "join." It would be impossible to avoid the idea. The statute requires no specific formula. It is not contended that only the use of the word "solicit" would violate the prohibition. Without such a limitation, the statute forbids any language which conveys, or reasonably could be found to convey, the meaning of invitation. That Thomas chose to meet the issue squarely, not to hide in ambiguous phrasing, does not counteract this fact. General words create different and "ten particular impressions on different minds. No speaker, however careful, can convey exactly his meaning, or the same meaning, to the different members of an audience. How one might "laud unionism," as the State and the State Supreme Court concede Thomas was free to do, yet in these circumstances not imply an invitation, is hard to conceive. This is the nub of the case, which the State fails to meet because it cannot do so. Workingmen do not lack capacity for making rational connections.

They would understand, or some would, that the president of U. A. W. and vice president of C.I.O., addressing an organization meeting, was not urging merely a philosophic attachment to abstract principles of unionism, disconnected from the business immediately at hand. The feat would be incredible for a national leader, addressing such a meeting, lauding unions and their principles, urging adherence to union philosophy, not also and thereby to suggest attachment to the union by becoming a member.

Furthermore, whether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. He must take care in every word to create no impression that he means, in advocating unionism's most central principle, namely, that workingmen should unite for collective bargaining, to urge those present to do so. The vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or restrains discussion which is not or may not be invitation. The sharp line cannot be drawn surely or securely. The effort to observe it could not be free speech, free press, or free assembly, in any sense of free advocacy of principle or cause. The restriction's effect, as applied, in a very practical sense was to prohibit Thomas not only to solicit members and memberships, but also to speak in advocacy of the cause of trade unionism in Texas, without having first procured the card. Thomas knew this and faced the alternatives it presented. When served with the order he had three choices: (1) to stand on his right and speak freely; (2) to quit, refusing entirely to speak; (3) to trim, and even thus to risk the penalty. He chose the first alternative. We think he was within his rights in doing so.

The assembly was entirely peaceable, and had no other than a wholly lawful purpose. The statements forbidden were not in themselves unlawful, had no tendency to incite to unlawful action, involved no element of clear and present, grave and immediate danger to the public welfare. Moreover, the State has shown no justification for placing restrictions on the use of the word "solicit." We have here nothing comparable to the case where use of the word "fire" in a crowded theater creates a clear and present danger which the State may undertake to avoid or against which it may protect. *Schenck v. United States*, 249 U. S. 47. We cannot say that "solicit" in this setting is such a dangerous word. So far as free speech alone is concerned, there can be no ban or restriction or burden placed on the use of such a word except on showing of exceptional circumstances where the public safety, morality or health is involved or some other substantial interest of the community is at stake.

If therefore use of the word or language equivalent in meaning was illegal here, it was so only because the statute and the order forbade the particular speaker to utter it. When legislation or its application can confine labor leaders on such occasions to innocuous and abstract discussion of the virtues of trade unions and so belaud even this with doubt, uncertainty and the risk of penalty, freedom of speech for them will be at an end. A restriction so destructive of the right of public discussion, without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment.

We do not mean to say there is not, in many circumstances, a difference between urging a course of action and merely giving and acquiring information. On the other hand, history has not been without periods when the search for knowledge alone was banned. Of this we may assume the men who wrote the Bill of Rights were aware. But the protection they sought was not solely for persons in intellectual pursuits. It extends to more than abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. "Free trade in ideas" means free trade in the opportunity to persuade to action, not merely to describe facts. Cf. *Abrams v. United States*, 250 U. S. 616, 624, and *Gitlow v. New York*, 268 U. S. 652, 672, dissenting opinions of Mr. Justice Holmes. Indeed, the whole

history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that the protections are given.

Accordingly, decision here has recognized that employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty. *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469. Decisions of other courts have done likewise.²¹ When to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed.²² Cf. *National Labor Relations Board v. Virginia Electric & Power Co.*, *supra*. But short of that limit the employer's freedom cannot be impaired. The Constitution protects no less the employees' converse right. Of course espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause. It is entitled to the same protection.

VI.

Apart from its "business practice" theory, the State contends that Section 5 is not inconsistent with freedom of speech and assembly, since this is merely a previous identification requirement which, according to the State court's decision, gives the Secretary of State only "ministerial, not discretionary" authority.

How far the State can require previous identification by one who undertakes to exercise the rights secured by the First Amendment has been largely undetermined. It has arisen here chiefly, though only tangentially, in connection with license requirements involving the solicitation of funds. *Cantwell v. Connecticut*, *supra*; cf. *Schneider v. State*, 305 U. S. 147; *Largent v. Texas*, 318 U. S. 418, and other activities upon the public streets or in public places, cf. *Lovell v. Griffin*, 303 U. S. 441; *Hague v. Committee for Industrial Organization*, 307 U. S. 496, or house-to-house

²¹ *National Labor Relations Board v. Ford Motor Co.*, 114 F. 2d 905 (C. C. A.); *National Labor Relations Board v. American Tube Bending Co.*, 134 F. 2d 993 (C. C. A.); compare *Texas & N. O. Ry. v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548, 568.

²² *National Labor Relations Board v. Trojan Powder Co.*, 135 F. 2d 337 (C. C. A.); *National Labor Relations Board v. New Era Die Co.*, 118 F. 2d 500; cf. *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58; *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72. Compare *Texas & N. O. Ry. v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548.

canvassing, cf. *Schneider v. State*, *supra*. In these cases, however, the license requirements were for more than mere identification or previous registration and were held invalid because they vested discretion in the issuing authorities to censor the activity involved. Nevertheless, it was indicated by dictum in *Cantwell v. Connecticut*, 310 U. S. 296, 306,²³ that a statute going no further than merely to require previous identification would be sustained in respect to the activities mentioned. Although those activities are not involved in this case, that dictum and the decision in *Bryant v. Zimmerman*, 278 U. S. 63, furnish perhaps the instances of pronouncement or decision here nearest this phase of the question now presented.

As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others.

We think the controlling principle is stated in *De Jonge v. Oregon*, 299 U. S. 353, 365. In that case this Court held that "consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime." And "those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violations of valid laws. But it is a different matter when the State, instead of prosecuting them for

²³ Cf. note 11 *supra*.

such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge."

If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.

Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present, and which it was said the State might regulate, in *Schneider v. State, supra*, and *Cantwell v. Connecticut, supra*. That however must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly. In this case the separation was not maintained. If what Thomas did, in soliciting Pat O'Sullivan, was subject to such a restriction, as to which we express no opinion, that act was intertwined with the speech and the general invitation in the penalty which was imposed for violating the restraining order. Since the penalty must be taken to have rested as much on the speech and the general invitation as on the specific one, and the former clearly were immune, the judgment cannot stand.

As we think the requirement of registration, in the present circumstances, was in itself an invalid restriction, we have no occasion

to consider whether the restraint as imposed goes beyond merely requiring previous identification or registration.²⁴ Nor do we undertake to determine the validity of Section 5 in any other application than that made upon the facts of this case. Neither do we ground our decision upon other contentions advanced in the briefs and argument. Upon the reargument attention was given particularly to the questions whether and to what extent the prohibitions of Section 5, or their application in this case, are consistent with the provisions of the National Labor Relations Act. Both the parties and the Government, which has appeared as *amicus curiae*, have advanced contentions on this issue independent of those put forward upon the question of constitutionality. Since a majority of the Court do not agree that Section 5 or its present

²⁴In securing the detailed information Section 5 requires, cf. note 1 *supra*, the Secretary of State has established an administrative routine for compliance, which includes a form of application requiring the applicant to state: (1) his name; (2) his address; (3) his labor union affiliations ["specify definitely and fully"]; (4) that "as evidence of my authority to act as Labor Organizer for the labor union with which I am connected, I am furnishing the following credentials"; (5) a copy of such credentials; (6) that he is a citizen of the United States of America; (7) whether he has ever been convicted of a felony in Texas or in any other State; and (a) if so, the nature of the offense and the State in which conviction was had; (b) whether his rights of citizenship have been fully restored; and (c) by what authority.

The Secretary of State testified that cards were issued as of course if the application blanks were properly filled in. But in his interpretative statement, issued to the general public, he said: "*In the absence of mistake, fraud or misrepresentation with respect to securing same, it is considered that the Secretary of State has no discretion in the granting of an 'organizer's card,' and that the applicant will be entitled to same upon compliance with the Act. It will be required, however, that the applicant show a bona fide affiliation with an existing labor union.*" (Emphasis added.) Precisely what "credentials" or evidence in connection with the felony inquiry or showing of bona fide affiliation will satisfy the Secretary is not made clear on the record. And, according to the Texas court's decision, "all who come within the provisions of the Act upon their good faith compliance therewith" are entitled to receive the card. (Emphasis added.) Compliance under the decision, it would seem, requires the Secretary to determine the good faith of the application, and thus the sufficiency of the authority to act for the union represented. Whether, in some instances at least, these determinations would go beyond "merely ministerial" action and require the exercise of discretion, or the time required to comply, by completing the routine, would so add to the burden that these things might amount to undue previous restraint or censorship, where mere registration or previous identification might not do so, need not be determined.

From the time the Act became effective in August, 1943, until the date of trial, September 25, 1943, 223 labor organizers' cards were issued. During that period 40 or 50 applications for cards were returned to the applicants for failure to fill in the information requested or to sign the application or to attach credentials. Of those all but 15 or 20 have been resubmitted and cards were granted. No application has been "positively denied" since the Act became effective.

application conflicts with the National Labor Relations Act, our decision rests exclusively upon the grounds we have stated for finding that the statute as applied contravenes the Constitution.

The restraint is not small when it is considered what was restrained. The right is a national right, federally guaranteed. There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty.

In view of the disposition we make of the cause, it is unnecessary to rule upon the motion appellee has filed to require appellant to furnish security for his appearance to serve the sentence.

The judgment is

Reversed.

Mr. Justice DOUGLAS, concurring.

The intimation that the principle announced in this case serves labor alone and not an employer has been adequately answered in the opinion of the Court in which I join. But the emphasis on such cases as *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469, and *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U. S. 533, to prove that discrimination moves me to add these words. Those cases would be relevant here if we were dealing with legislation which regulated the relations between unions and their members. Cf. *Steele v. Louisville & Nashville Railroad Co.*, decided December 18, 1944. No one may be required to obtain a license in order to speak. But once he uses the economic power which he has over other men and their jobs to influence their action, he is doing more than exercising the freedom of speech protected by the First Amendment. That is true whether he be an employer or an employee. But as long as he does no more than speak he has the same unfettered right, no matter what side of an issue he espouses.

Mr. Justice BLACK and Mr. Justice MURPHY join in this opinion.

Mr. Justice JACKSON, concurring.

As frequently is the case, this controversy is determined as soon as it is decided which of two well-established, but at times overlapping, constitutional principles will be applied to it. The State of Texas stands on its well-settled right reasonably to regulate the pursuit of a vocation, including—we may assume—the occupation of labor organizer. Thomas, on the other hand, stands on the equally clear proposition that Texas may not interfere with the right of any person peaceably and freely to address a lawful assemblage of workmen intent on considering labor grievances.

Though the one may shade into the other, a rough distinction always exists, I think, which is more shortly illustrated than explained. A state may forbid one without its license to practice law as a vocation, but I think it could not stop an unlicensed person from making a speech about the rights of man or the rights of labor, or any other kind of right, including recommending that his hearers organize to support his views. Likewise, the state may prohibit the pursuit of medicine as an occupation without its license but I do not think it could make it a crime publicly or privately to speak urging persons to follow or reject any school of medical thought. So the state to an extent not necessary now to determine may regulate one who makes a business or a livelihood of soliciting funds or memberships for unions. But I do not think it can prohibit one, even if he is a salaried labor leader, from making an address to a public meeting of workmen, telling them their rights as he sees them and urging them to unite in general or to join a specific union.

This wider range of power over pursuit of a calling than over speech-making is due to the different effects which the two have on interests which the state is empowered to protect. The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible, or against unauthorized representation of agency. A usual method of performing this function is through a licensing system.

But it cannot be the duty, because it is not the right, of the state to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regu-

lating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us. *West Virginia State Board of Education v. Barnette*, 319 U. S. 624. Nor would I. Very many are the interests which the state may protect against the practice of an occupation, very few are those it may assume to protect against the practice of propagandizing by speech or press. These are thereby left great range of freedom.

This liberty was not protected because the forefathers expected its use would always be agreeable to those in authority or that its exercise always would be wise, temperate, or useful to society. As I read their intentions, this liberty was protected because they knew of no other way by which free men could conduct representative democracy.¹

The necessity for choosing collective bargaining representatives brings the same nature of problem to groups of organizing workmen that our representative democratic processes bring to the nation. Their smaller society, too, must choose between rival leaders and competing policies. This should not be an underground process. The union of which Thomas is the head was one of the choices offered to these workers, and to me it was in the best American tradition that they hired a hall and advertised a meeting, and that Thomas went there and publicly faced his labor constituents. How better could these men learn what they might be getting into? By his public appearance and speech he would disclose himself as a temperate man or a violent one, a reasonable leader that well-disposed workmen could follow or an irresponsible one from whom they might expect disappointment, an earnest and understanding leader or a self-seeker. If free speech anywhere serves a useful social purpose, to be jealously guarded, I should think it would be in such a relationship.

But it is said that Thomas urged and invited one and all to

¹ Woodrow Wilson put the case for free speech in this connection aptly: "I have always been among those who believed that the greatest freedom of speech was the greatest safety, because if a man is a fool, the best thing to do is to encourage him to advertise the fact by speaking. It cannot be so easily discovered if you allow him to remain silent and look wise, but if you let him speak, the secret is out and the world knows that he is a fool. So it is by the exposure of folly that it is defeated; not by the seclusion of folly, and in this free air of free speech men get into that sort of communication with one another which constitutes the basis of all common achievement." Address at the Institute of France, Paris, May 10, 1919. ² Selected Literary and Political Papers and Addresses of Woodrow Wilson (1926) 333.

join his union, and so he did. This, it is said, makes the speech something else than a speech; it has been found by the Texas courts to be a "solicitation" and therefore its immunity from state regulation is held to be lost. It is not often in this country that we now meet with direct and candid efforts to stop speaking or publication as such. Modern inroads on these rights come from associating the speaking with some other factor which the state may regulate so as to bring the whole within official control. Here, speech admittedly otherwise beyond the reach of the states is attempted to be brought within its licensing system by associating it with "solicitation." Speech of employers otherwise beyond reach of the Federal Government is brought within the Labor Board's power to suppress by associating it with "coercion" or "domination." Speech of political malcontents is sought to be reached by associating it with some variety of "sedition." Whether in a particular case the association or characterization is a proven and valid one often is difficult to resolve. If this Court may not or does not in proper cases inquire whether speech or publication is properly condemned by association, its claim to guardianship of free speech and press is but a hollow one.

Free speech on both sides and for every faction on any side of the labor relation is to me a constitutional and useful right. Labor is free to turn its publicity on any labor oppression, substandard wages, employer unfairness, or objectionable working conditions. The employer, too, should be free to answer, and to turn publicity on the records of the leaders or the unions which seek the confidence of his men. And if the employees or organizers associate violence or other offense against the laws with labor's free speech, or if the employer's speech is associated with discriminatory discharges or intimidation, the constitutional remedy would be to stop the evil, but permit the speech, if the two are separable; and only rarely and when they are inseparable to stop or punish speech or publication.

But I must admit that in overriding the findings of the Texas court we are applying to Thomas a rule the benefit of which in all its breadth and vigor this Court denies to employers in National Labor Relations Board cases. Cf. *National Labor Relations Board v. Virgin a Electric & Power Co.*, 314 U. S. 469, 479; *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U. S. 533; *Trojan Powder Co. v. National Labor Relations*

Board, 135 F. 2d 337, cert. denied, 320 U. S. 768; *National Labor Relations Board v. American Tube Bending Co.*, 134 F. 2d 993, cert. denied, 320 U. S. 768; *Elastic Stop Nut Corp. v. National Labor Relations Board*, 142 F. 2d 371, cert. denied October 9, 1944. However, the remedy is not to allow Texas improperly to deny the right of free speech but to apply the same rule and spirit to free speech cases whoever the speaker.

I concur in the opinion of Mr. Justice RUTLEDGE that this case falls in the category of a public speech, rather than that of practicing a vocation as solicitor. Texas did not wait to see what Thomas would say or do. I cannot escape the impression that the injunction sought before he had reached the state was an effort to forestall him from speaking at all and that the contempt is based in part at least on the fact that he did make a public labor speech.

I concur in reversing the judgment.

MR. JUSTICE ROBERTS.

The right to express thoughts freely and to disseminate ideas fully is secured by the Constitution as basic to the conception of our government. A long series of cases has applied these fundamental rights in a great variety of circumstances.¹ Not until today, however, has it been questioned that there was any clash between this right to think one's thoughts and to express them and the right of people to be protected in their dealings with those who hold themselves out in some professional capacity by requiring registration of those who profess to pursue such callings. Doctors and nurses, lawyers and notaries, bankers and accountants, insurance agents and solicitors of every kind in every State of this Union have traditionally been under duty to make some identification of themselves as practitioners of their calling. The question

¹ *Stromberg v. California*, 283 U. S. 359; *Near v. Minnesota*, 283 U. S. 697; *Grosjean v. American Press Co.*, 297 U. S. 233; *De Jonge v. Oregon*, 299 U. S. 353; *Herndon v. Lowry*, 301 U. S. 242; *Lovell v. Griffin*, 303 U. S. 444; *Hague v. C. I. O.*, 307 U. S. 496; *Schneider v. Irvington*, 308 U. S. 147; *Thornhill v. Alabama*, 310 U. S. 88; *Carlson v. California*, 310 U. S. 106; *Cantwell v. Connecticut*, 310 U. S. 296; *American Federation of Labor v. Swing*, 312 U. S. 321; *Bridges v. California*, 314 U. S. 252; *Bakery & P. Drivers & Helpers v. Wohl*, 315 U. S. 769; *Martin v. Struthers*, 319 U. S. 141; *Taylor v. Mississippi*, 319 U. S. 583; *Cafeteria Employees Union v. Angelos*, 320 U. S. 293. Compare *Murdock v. Pennsylvania*, 319 U. S. 105; *Douglas v. Jeannette*, 319 U. S. 157; *Board of Education v. Barnette*, 319 U. S. 624; *Follett v. McCormick*, 321 U. S. 573.

before us is as to the power of Texas to call for such registration within limits precisely defined by the Supreme Court of that State in sustaining the statute now challenged. The most accurate way to state the issue is to quote the construction which that Court placed upon the Texas statute and the exact limits of its requirement:

"A careful reading of the section of the law here under consideration will disclose that it does not interfere with the right of the individual lay members of unions to solicit others to join their organization. It does not affect them at all. It applies only to those organizers who for a pecuniary or financial consideration solicit such membership. It affects only the right of one to engage in the business as a paid organizer, and not the mere right of an individual to express his views on the merits of the union. Furthermore, it will be noted that the Act does not require a paid organizer to secure a license, but merely requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union. The Act confers no unbridled discretion on the Secretary of State to grant or withhold a registration card at his will, but makes it his mandatory duty to accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith."

The record discloses that Texas, in the exercise of her police power, has adopted a statute regulating labor unions. With many of its provisions we are not presently concerned. The constitutional validity of but a single section is drawn in question. That section requires every "labor union organizer" (defined by the Act as a person "who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union") to request, in writing, of the Secretary of State, or personally to apply to the Secretary for an "organizer's card", before soliciting members for his organization, and to give his name, his union affiliation, and his union credentials.² The Secretary is then to issue to him a card showing his name and affiliation, which is to be signed by him and also signed and sealed by the Secretary of State, and is to bear the designation "labor organizer." It is made the duty of the organizer to carry the card and, on request, to exhibit it to any person he solicits.

² A section of the Act forbids an alien or a convicted felon whose civil rights have not been restored to act as a labor organizer, but these provisions were not here invoked or applied and nothing in this case turns on them. There is no occasion to discuss them until they are drawn in question. And in addition, Section 15 of the Act contains a sweeping severability clause.

The Act makes violation the basis of criminal prosecution and authorizes injunctions to prevent threatened disregard of its provisions. In this instance both procedures were followed, but there is before us only the validity of an injunction and the sanction imposed for refusal to obey it.

As always, it is important to reach the precise question presented. One path to this end is to note what is not involved.

First, no point is made of the circumstance that the appellant's proposed activity was enjoined in advance. Counsel at our bar asserted the constitutional vice lay in the prohibition of the statute and that vice would preclude arrest and conviction for violation, no less than injunction against the denounced activity.

Secondly, the appellant does not contend that he was other than a "labor organizer" within the meaning of the Act. In fact he is an officer of a union and not employed specifically as an organizer or solicitor of memberships. He might well have questioned the application of the law to him, or to a public address made by him in his official capacity, but he refrained, obviously because he wished to test the Act's validity and so, in effect, stipulated that its sweep included him, and his conduct on the occasion in question.

Thirdly, the appellant does not contend that, in attempting to identify solicitors and preclude solicitation without identification, the statute either in terms, or as construed and applied, reaches over into the realm of public assembly, of public speaking, of argument or persuasion. Aware that the state proposed to invoke the statute against him, he made sure that the bare right he asserted to solicit without compliance with its requirement should not be clouded by confusion of that right with the others mentioned. In his address, therefore, he was at pains to state that he then and there solicited members of the audience to join a named union; and to make assurance of violation doubly sure, he solicited a man by name and offered him a membership application, which the man then and there signed.

Fourthly, the Act and the injunction which he disobeyed say nothing of speech; they are aimed at a transaction,—that of solicitation of members for a union. This, and this only, is the statutory object which is said to render it unconstitutional.

We are now in a position accurately to state the appellant's contention. He asserts that, under the Constitutional guarantees, there is a sharp distinction between business rights and civil

rights; that in *discussion* of labor problems, and equally in *solicitation* of union membership, civil rights are exercised; that labor organizations are the only effective means whereby employes may exercise the guaranteed civil rights, and that, consequently, *any* interference with the right to solicit membership in such organizations is a prohibited abridgment of these rights, even though the Act applies only to paid organizers.

The argument then seeks to draw a distinction between this case and those in which we have sustained registration of persons who desire to use the streets or to solicit funds; urges that the burden the Act lays on labor organizations is substantial and seriously hampering and is not intended to prevent any "clear and present danger" to the State.

Stripped to its bare bones, this argument is that labor organizations are beneficial and lawful; that solicitation of members by and for them is a necessary incident of their progress; that freedom to solicit for them is a liberty of speech protected against state action by the Fourteenth Amendment and the National Labor Relations Act, and hence Texas cannot require a paid solicitor to identify himself. I think this is the issue and the only issue presented to the courts below and decided by them, and the only one raised here. The opinion of the court imports into the case elements on which counsel for appellant did not rely; elements which in fact counsel strove to eliminate in order to come at the fundamental challenge to any requirement of identification of a labor organizer.

The position taken in the court's opinion that in some way the statute interferes with the right to address a meeting, to speak in favor of a labor union, to persuade one's fellows to join a union, or that at least its application in this case does, or may, accomplish that end is, in my judgment, without support in the record.

We must bear in mind that the appellant himself was persuaded that merely to make the speech he had come to Texas to deliver would not violate the Act, and that he, therefore, determined, in order to preclude all doubt as to violation, to solicit those present to join the union. And, for the same purpose, he further specifically solicited an individual.

He had not been enjoined from making a speech, nor from advocating union affiliation. The injunction, in terms, forbade

"soliciting membership in Local Union No. 1002" . . . or "memberships in any other labor union" without first obtaining a card. The information on which the citation for contempt was based charged (1) that he solicited Pat O'Sullivan to join a local union on September 23; (2) that on the same day he openly and publicly solicited an audience of some three hundred persons to join the Oil Workers International Union. The uncontradicted evidence is that, with application blanks in his hand, he said: "I earnestly urge and solicit all of you that are not members of your local union to join your local unions. I do that in the capacity of Vice-President of C.I.O."

The text of the speech put in evidence by the appellant does not differ materially. It runs: "as Vice-President of the C.I.O. and as a union man, I earnestly ask those of you who are not now members of the Oil Workers International Union to join now. I solicit you to become a member of the union of your fellow workers"

The judgment in the contempt proceeding states only that the court "finds that the defendant . . . did . . . violate this court's temporary restraining order heretofore issued injoining and restraining him, the said R. J. Thomas, from soliciting members to join the Oil Workers International Union"

In his petition to the State Supreme Court for *habeas corpus*, the appellant did not suggest that, under the guise of preventing him from soliciting, he was held in contempt for making an address. The opinion of that court states that the complaint charged appellant with engaging "in soliciting members for a certain labor union"; with violating the injunction issued "by soliciting members for said union"; and adds: "*Relator's counsel in his argument before this Court conceded the existence of necessary factual basis for the judgment in the contempt proceedings.*" (Italics supplied.) Thus it appears that below, as here, the challenge was not against the form or content of the pleadings or the order; not that Texas was trying to enjoin appellant from making a speech, but that it could not regulate solicitation.

In construing the statute, the court below said: "It applies only to those organizers who for a pecuniary or financial consideration solicit such membership." Thus it excluded all questions as to the right of speech and assembly as such.

In his motion for a rehearing below, the appellant advanced no contention that the judgment was directed at his speech as such.

In his statement as to jurisdiction filed in this court he said: "Appellant delivered his speech to the meeting attended largely by workers of the Humble Oil Company and solicited the audience in general and one Pat O'Sullivan in particular to join the Oil Workers International Union." (Italics supplied.)

In his statement of points to be relied on in this court, he stated he would urge that the Act is unconstitutional because it "imposes a previous general restraint upon the exercise of Appellant's right of free speech by prohibiting Appellant from *soliciting workers to join a union*", without obtaining an organizer's card. And again that it violates other Constitutional provisions "in requiring Appellant to obtain a license (organizer's card) before *soliciting workers to join a union*." (Italics supplied.)

Nowhere in the document is there any suggestion that the statute is intended, or has been applied, to restrain or restrict the freedom to speak, save only as speech is an integral part of the transaction of paid solicitation of men to join a union.

Since its requirements are not obviously burdensome, we cannot void the statute as an unnecessary or excessive exercise of the State's police power on any *a priori* reasoning. The State Supreme Court has found that conditions exist in Texas which justify and require such identification of paid organizers as the law prescribes. There is not a word of evidence in the record to contradict these conclusions. In the absence of a showing against the need for the statute this court ought not incontinently to reject the State's considered views of policy.

The judgment of the court below that the power exists reasonably to regulate solicitation, and that the exercise of the power by the Act in question is not unnecessarily burdensome, is not to be rejected on abstract grounds. No fee is charged. The card may be obtained by mail. To comply with the law the appellant need only have furnished his name and affiliation, and his credentials. The statute nowise regulates, curtails, or bans his activities.

We are asked then, on this record, to hold without evidence to support such a conclusion, and as a matter of judicial notice, that Texas has no *bona fide* interest to warrant her law makers in requiring that one who engages, for pay, in the business of soliciting persons to join unions shall identify himself as such. That is all the law requires.

We should face a very different question if the statute attempted to define the necessary qualifications of an organizer; purported to regulate what organizers might say; limited their movements or activities; essayed to regulate time, place or purpose of meetings; or restricted speakers in the expression of views. But it does none of these things.

It is suggested that the Act is to be distinguished from legislation regulating the use of the streets or the solicitation of money. As respects the former, I think our decision in *Cox v. New Hampshire*, 312 U. S. 569, and that of the Circuit Court of Appeals in *City of Manchester v. Leiby*, 117 F. 2d 661 are indistinguishable in principle, and the court below properly so held. If one disseminating news for his own profit may rightfully be required to identify himself, so may one who, for profit, solicits persons to join an organization.

As respects the second, I see no reason to limit what was said in *Cantwell v. Connecticut*, 310 U. S. 296, 305, to solicitation of money. The solicitation at which the Texas Act is aimed may or may not involve the payment of initiation fees or dues to the solicitor. But, in any case, it involves the assumption of business and financial liability by him who is persuaded to join a union. The transaction is in essence a business one. Labor unions are business associations; their object is generally business dealings and relationships as is manifest from the financial statements of some of the national unions. Men are persuaded to join them for business reasons, as employers are persuaded to join trade associations for like reasons. Other paid organizers, whether for business or for charity, could be required to identify themselves. There is no reason why labor organizers should not do likewise. I think that if anyone pursues solicitation as a business for profit, of members for any organization, religious, secular or business, his calling does not bar the state from requiring him to identify himself as what he is,—a paid solicitor.

We may deem the statutory provision under review unnecessary or unwise, but it is not our function as judges to read our views of policy into a Constitutional guarantee, in order to overthrow a state policy we do not personally approve, by denominating that policy a violation of the liberty of speech. The judgment should be affirmed.

The CHIEF JUSTICE, Mr. Justice REED and Mr. Justice FRANKFURTER join in this opinion.